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A
COLLECTION
OF
D E C R E E S
BY
THE COURT OF EXCHEQUER
IN
TITHE-CAUSES,
FROM
THE USURPATION TO THE PRESENT TIME.

VOL. IV.

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COLLECTION
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D E C R E E S
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THE COURT OF EXCHEQUER
IN
TITHE-CAUSES,
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THE USURPATION TO THE PRESENT TIME.

CAREFULLY EXTRACTED FROM,
THE BOOKS OF DECREES AND ORDERS
OF
THE COURT OF EXCHEQUER

(By the Permission of the Court),

AND ARRANGED IN CHRONOLOGICAL ORDER. WITH TABLES OF THE
NAMES OF THE CASES, AND THE CONTENTS.

BY
HUTTON WOOD,

ONE OF THE SIX CLERKS OF THE COURT OF EXCHEQUER.

IN FOUR VOLUMES.

VOLUME THE FOURTH.

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ERRATA ET ADDENDA.

N. B. In vol. 3, in the Table of Contents, 2d Page, 2d Line, read "*twopence*," instead of "*two shillings*;" and Page 18, Line 5, read "*payable to the vicar*" instead of "*titheable as a small tithe*."

Page 6 and 7, read "*Saint Ofsyth*" instead of "*Saint Byth*, and so through the cause; and also "*Darcy*" instead of "*Dercy*."

— 11, Line 16, read "*impropriate*" instead of "*imparsones*."

— 35, Last line but one, read "*this day*," instead of "*the 20th of November 1777*."

— 39, Line 8, read "*issues were directed*" instead of "*an issue was directed*," and Line 10, read "*issues* instead of "*issue*"

— 61, Line 4, read "*defendant wrought*."

— 75, Line 38, read of "*four pounds yearly as and for such modus*."

— 79, Line 39, read "*within*" instead of "*with*."

— 123, Line 30, read "*township*" instead of "*townships*."

— 138, Line 5, read "*1781*" instead of "*1761*."

— 158, Line 16, read "*1780*" instead of "*1680*."

— 162, Line 30, read "*for*" instead of "*from*."

— 180, Line 22, read "*bay*" instead of "*ray*."

— 192, Line 1, read "*and*" instead of "*an*."

— 240, Last line but three, strike out the words "*to the plaintiff*."

— 272, Line 1, read "*several decrees*" instead of "*three several*."

— 289, Line 34, read "*assignment tithe*" instead of "*tithe*."

— 346, Line 38, read "*commission or commissions might be*."

— 469, Line 34, read "*to have been made*" instead of "*have made*."

— 545, Line 16, read "*by 31*," instead of "*by 69*."

— 558, Line 44, read "*Norcliffe*" instead of "*Bordiffe*."

— 562, read "*Docking field*" instead of "*Dorking field*," through the cause.

— 564, Line 1, read "*Talden*" instead of "*Galden*."

— 565, Line 26, read "*seat roll*" instead of "*scal roll*."

A
COLLECTION
OF
DECREES
BY
THE COURT OF EXCHEQUER
IN
TITHE-CAUSES,
DURING
THE REIGN OF GEORGE THE THIRD.

TURNER *against* HEMUS.
Worcestershire, 11th December 1776.

MICH. TERM,
17. GEO. 3.

THE plaintiff had been appointed by the inhabitants of the parish of *Kempsey*, in the county of *Worcester*, chaplain of the chapel of *Stoulton*, in the said parish, for the term of his natural life; and having been duly licensed by the bishop to preach therein, he claimed by his bill, by virtue of immemorial usage, all tithes, oblations, obventions, and other spiritual profits, happening within the said tithing of *Stoulton*, the tithes of grain and mortuaries only excepted.

Quære, Whether the chaplain of Stoulton, in the parish of Kempsey, in Worcestershire, is entitled to the small tithes of the chapelry of Stoulton in kind, or only to a pension of 13l. 18s. 4d. from the inhabitants, and 6l. from the impropriator.

The defendant *Hemus* admitted, that the chapel was an ancient chapel; but denied, that the inhabitants of *Stoulton* had a right to nominate a chaplain thereto for life, or that the licence of the bishop could entitle him to receive the profits thereof; and contended, that the same either belonged to the dean and chapter of *Worcester*, or to the vicar of *Kempsey*.

The defendant *Reeves* said, that two hundred years ago, and upwards, the inhabitants of *Stoulton* procured a licence to erect a chapel, and to maintain a chaplain therein; that they agreed

TURNER
against
HEMUS.

amongst themselves to raise an annual stipend of thirteen pounds, eighteen shillings, and fourpence, for the maintenance of such chaplain; that the said sum was to be raised according to the proportion of land which each inhabitant occupied within the chapelry; that it had been accordingly raised, and paid by quarterly payments to such chaplain, in lieu of all spiritual demands on the inhabitants; that he had constantly received the said sum of thirteen pounds, eighteen shillings, and fourpence from the inhabitants, and the annual sum of six pounds from the dean and chapter of *Worcester*, or their lessee of the tithes of the said hamlet, in full satisfaction of all tithes and demands on the said inhabitants.

The defendants *Toovey* and *Sir Charles Cocks* answer in like manner.

The dean and chapter of *Worcester* admitted, that if the plaintiff had been regularly licensed and duly nominated he would have been entitled to receive the said several tithes and profits in as ample manner as any of his predecessors had received and enjoyed the same.

The defendant *Boulter*, the vicar of *Kempsey*, said, that he believed the plaintiff was licensed to the chapel by the *Bishop of Worcester*; that the chapel was A CHAPEL OF EASE to the parish of *Kempsey*; that it was formerly enjoyed by the vicar thereof; but that he, the present vicar, did not claim any tithes or spiritual dues belonging thereto, as he did not perform any spiritual office therein.

The plaintiff replied to the answers of the defendants *Hemus*, *Recve*, *Toovey*, and *Cocks*; and the defendants rejoined; and witnesses were examined on both sides; and upon hearing counsel for all parties; and reading the following evidence for the plaintiff, viz. a decree or award of *the vicar general*, dated at *Worcester* the last day of *July* 1529; several depositions of witnesses; a terrier signed "*John Symonds*," curate, and three others, churchwarden and inhabitants, dated in 1585; and reading for the defendants an indenture of lease, dated the twenty-third of *June* 1774, from the dean and chapter of *Worcester* to the defendant *Cocks*; and also two receipts;

THE COURT, which was full, directed an issue to try, "Whether the plaintiff *Richard Turner*, as clerk or chaplain of the chapel of *Stoulton*, in the parish of *Kempsey*, in the county of *Worcester*, is entitled to have, receive, and enjoy, all tithes, oblations, obventions, and other spiritual profits, happening, arising, increasing, and renewing, within the tithing, district, or chapelry of *Stoulton* aforesaid (the tithes of grain and living mortuaries only excepted), or to any and what part of such tithes." The plaintiff in equity to be the plaintiff at law; the action to be tried by a special jury; the judge to indorse any special matter; and further directions to be reserved until after the trial.

CALEX

CALEY *against* WILLIAMSON.HILARY TERM
17. GEO. 3.*Yorkshire, 3d February 1777:*

THE bill stated, that *F. Lascelles*, deceased, being seised of the impropriate rectory of *Brompton*, in the county of *York*, and entitled to all the tithes of corn, grain, hay, and other tithes, great and small, arising therein, did, by indenture dated the eighth of *October* 1663, made between him of the one part and *Sir William Cayley, Knight and Baronet*, ancestor of the plaintiff's, of the other part, deceased, for the considerations therein mentioned, grant to him and his heirs for ever, all the tithes of corn, grain, hay, and other tithes whatsoever, arising within *Fowbridge, Trosdale, and Darcombe*, in the said parish of *Brompton*, and all the tithes of wool and lambs arising in the said parish, and also within *Sawden* in the said parish, to hold the same to and to the use of the said *Sir William Cayley*, his heirs and assigns, for ever; that at the time of such lease, all the said tithes and premises were in the possession or occupation of the said *Sir William Cayley*, his undertenants or assigns; that by virtue of the said indenture, the said *Sir William Cayley* became entitled to have and receive all the tithes thereby granted him *in kind*; that the plaintiff, by, through, or under him was, and ever since the twentieth day of *August* 1764 had been, as tenant in fee simple, fee tail, or some other good estate of inheritance, well entitled to have and receive to his own use all the said tithes arising within *Fowbridge* aforesaid, in the said parish, and parcel of the said rectory impropriate, and to take the same in kind; that the defendant for several years last past had been, and then was, tenant and occupier of a very large farm within *Fowbridge*, consisting of arable, meadow, pasture, and other land; that since *Michaelmas Day* 1772, he had used the said farm, and had had thereon corn, grain, clover, grass seeds, hay, horses, mares, colts, cows, calves, sheep, lambs, poultry, and the other titheable matters stated in the bill, the tithes of which he had refused to pay.

There is a *modus* of 10l. a year payable to the rector of *Brompton*, in *Yorkshire*, in lieu of the great and small tithes of such parts of *Fowbridge Farm* as lies within the said parish.

The defendant said, that *William Bethell* was seised of the manor or capital messuage of *Fowbridge*, otherwise *Fowlbridge*, and of all the houses, buildings, lands, and hereditaments thereto belonging, for and during three lives, under a lease granted to him by the *Archbishop of York*, at twenty pounds a-year; that he, the defendant, on the thirtieth of *October* 1772, contracted and agreed with *William Bethell* for the purchase of one moiety of the manor and the intirety of such part of the capital messuages, buildings, lands, grounds, and hereditaments as were then in the occupation of his, the defendant's, mother; that *Vincent Seller* contracted for the other half, as by indentures of lease and release dated the sixth and seventh of *April* 1773;

CALVEY
against
WILLIAMSON.

stated in the answer, would more fully appear ; that ever since his said purchase, he had been, and then was, seised of and well entitled to one undivided moiety of the manor or reputed manor of *Fowbridge*, and the intirety of such parts of the said capital messuage, buildings, lands, hereditaments, and premises, as were thereby conveyed to him ; that such estate so purchased and conveyed to him consisted, besides the undivided moiety of the manor, of a dwelling-house, barn, and divers closes of land in the answer mentioned ; that part of the said closes and grounds lay within the said parish of *Brompton* ; that the remaining part thereof lay in the parish of *Ebberston* ; that he could not tell the several quantities of the said estate which lay in the said parishes respectively ; that the yearly sum of five pounds, and no more, had been immemorially payable by the occupier of the particular lands before mentioned, not situate in the parish of *Ebberston*, to the rector or the impropiator of the parish of *Brompton*, by half-yearly payments, on *Lady Day* and *Michaelmas Day*, as a *modus* in lieu of all tithes whatsoever, both great and small, arising from such lands not situate in the parish of *Ebberston* and every or any part thereof ; that he had, ever since *Lady Day* 1773, held the farm and lands so purchased as owner thereof, subject to a moiety of the archbishop's rent of twenty pounds a-year ; that he had tendered such *modus* to the plaintiff every half-year since that time, but which he had refused to accept. He admitted, that on the twelfth of *November* 1772, the plaintiff had given notice to his, the defendant's, mother, who then occupied the said farm, that he would for the future take his tithes thereof in kind ; that he, the defendant, was soon afterwards informed thereof ; but that, admitting him to be entitled to tithes in kind, the notice was not regular. He also admitted, that in *July* 1773 the plaintiff had demanded of him the tithe in kind of his hay arising on his said farm for that year ; and that he had refused to set it out ; and he insisted on such *modus* in bar to the relief prayed by the bill.

The plaintiff replied ; the defendant rejoined ; and witnesses were examined on both sides ; and the cause came on to be heard on the tenth of *July* 1776, when the defendants undertook to admit the plaintiff's right to tithes in kind, in case tithes should appear to be due, and to insist only on the *modus* in lieu thereof. The cause was accordingly continued in the paper of causes, and ordered to stand over until *Michaelmas Term* ; the defendant in the mean time to be at liberty to take one or both of his answers off THE FILE, as he should be advised, and to amend the same, by insisting, that the lands in his occupation in the parish of *Brompton* were, together with the lands in the occupation of *Vincent Seller*, mentioned in the answer of the said *Vincent Seller*

Seller to a bill filed against him by the plaintiff, which cause was likewise standing in the paper for hearing, subject to one entire yearly *modus* of ten pounds, payable as in the said defendant's answers in this cause, or one of them, is mentioned, with respect to a *modus* of five pounds set up by the said answers, or one of them, in lieu of tithes claimed by the plaintiff, and by striking out and waiving the *modus* of five pounds insisted on by the said answers or one of them; the said answers to be amended in the several particulars aforesaid, and filed forthwith; the defendant should pay to the plaintiff five pounds, the costs of the day.

Caley
against
Williamson.

The defendant, in pursuance of the said order, paid such costs, and amended his answers in the aforesaid particulars; and the cause came on to be heard the third of *February* 1777; and upon hearing counsel on both sides; and on debate of the matter;

THE COURT ordered a trial at law upon the following issue:
 "Whether, from the time whereof the memory of man is not
 "to the contrary, the yearly sum of ten pounds has been paid,
 "and hath been lawfully and of right due and payable from or
 "by the occupier or occupiers for the time being of a certain
 "capital messuage, called *Fowbridge*, otherwise *Fowlbridge*,
 "within the parish of *Brompton*, in the county of *York*, and all
 "the houses, lands, and hereditaments thereto belonging, now
 "in the occupation of the said defendant and the said *Vincent*
 "Seller, and not situate within the parish of *Ebberston*, to the
 "rector or impropiator of the rectory or parish of *Brompton* for
 "the time being, or his lessee or farmer, by equal half-yearly
 "payments, to wit, on *Lady Day* and *Michaelmas Day*, old stile,
 "as and for a *modus* in lieu and full satisfaction of and for all
 "tithes whatsoever, both great and small, arising on or from such
 "lands within the said manor of *Fowbridge*, otherwise *Fowl-*
 "*bridge*, as are not situate within the said parish of *Ebberston*, or
 "any part thereof." The defendant in equity to be plaintiff at
 law; the action to be tried by a special jury; the judge to in-
 dorse any special matter; and costs and further directions re-
 served until after trial.

The issue was accordingly tried; and the jury found a verdict in favour of the *modus*.

THE COURT, on the twenty-second of *June* 1778, accordingly ordered the bill to be dismissed with costs.

The bill brought by *Caley* against *Seller* was also dismissed with costs.

SKYNNER, Chief Baron.
 EYRE, Baron.
 HOTHAM, Baron.
 PERRY, Baron.

HILARY TERM
17. GEO. 3.

STACEY *against* CREMER.

Essex, 21st February 1777.

The lessee, under the governors of the Charter House, of the rectory of South Minster, in Essex, claims the corn tithes of South Minster Hall Farm and the tithes of hay of Broadward Farm.

THE bill stated, that by indenture of lease dated the twenty-ninth of *August* 1768, made between the governors of the lands, possessions, revenues, and goods, of the hospital of KING JAMES, founded in the charter-house, in the county of *Middlesex*, at the petition and only costs and charges of *Thomas Sutton, Esq.* of the one part, and the plaintiff of the other, they demised to him all those their tithes yearly arising in *South Minster*, in the county of *Essex*, belonging to the rectory of *South Minster*, which then or then late were in the tenure or occupation of *Richard Firebrane*, together with a garden and piece of land, and such liberty of ingress as in the said indenture was mentioned, to hold to him for twenty-one years, at one hundred and seventy pounds a-year, as in the said indenture was more fully mentioned; that the said governors, from the time of their first incorporation, had been, and still were, impropiators of the rectory of *South Minster* and the tithes thereof; that by virtue thereof, they or their lessees had, for all the said time, of common right been entitled to have, take, and receive, all and singular the tithes of corn and grain and other great tithes yearly growing therein in kind; that the defendant *Gilbert Cremer*, before and at *Michaelmas Day* 1768, was the tenant or occupier of *South Minster Hall Farm*, consisting of five hundred acres of arable land; that he held and enjoyed the same to *Michaelmas Day* 1770; that he then surrendered up the possession thereof to the defendant *John Cremer* his son, who ever since had been, and then was, the tenant or occupier thereof; that the defendants, during the said time, had yearly ploughed and sowed the greater part of the lands belonging thereto with corn and grain, clover and other grass seeds, and mowed and made the same into hay, and had yearly therefrom crops of corn, grain, and hay, and other titheable matters, which they had carried away, without setting out the tithes thereof in kind, or permitting the plaintiff to take and receive the same as he ought to have done; that the defendant *Gilbert Cremer*, ever since *Michaelmas* 1768, was tenant and occupier of *Broadward Farm*, being mostly meadow land, and had regularly mowed yearly several loads of hay, the tithes whereof he had refused to pay. The bill therefore prayed an account of the said tithes from *Michaelmas Day* 1768 to *Michaelmas Day* 1771 inclusive, and payment thereof.

The defendant says, that *South Minster Hall Farm* was part of the *Demesne Lands* of the manor of *South Minster*; that the manor was parcel of the possessions of the monastery of *Saint Byth*, and was therefore tithe free.

The defendant admitted, that before *Michaelmas* 1768 he was tenant or occupier of *South Minster Hall Farm*; that he enjoyed the same until *Michaelmas* 1770; that he then surrendered the

possession

possession thereof to his son, who had ever since been the occupier thereof; that the said farm was part of *the Demefne Lands* of *the manor of South Minster*; that the same were formerly part of the possessions of the monastery of *Saint Byth*, in the county of *Essex*; that the said rectory impropriate belonged to the said monastery; that the farm was at the time of the dissolution of the monastery, and then for time immemorial had been held freed and discharged from the payment of great tithes, by prescription or otherwise; and that by the statute 31. *Hen. 8.* the same was, and ever since had been, so exempted and discharged; that the said manor, farm, and premises were, by letters patent dated the sixteenth of *April*, in the fourth year of *Edward the Sixth*, granted to *Thomas Dercy*; that the same afterwards came to *Thomas Lord Dercy*; that *Lord Dercy* sold and conveyed the same to *Thomas Sutton*, founder of *THE CHARTER HOUSE*, by licence dated the third of *May*, in the twenty-seventh year of *Queen Elizabeth*; that *Henry the Eighth*, in the year 1539, granted the rectory of *South Minster*, and the advowson of the vicarage of the said parish, to *Sir Richard Rich*, which afterwards descended and came to his son *Richard Lord Rich*; that *Lord Rich*, on the second of *September* 1575, conveyed the same to *Heron* and *Albany*, from whom the same afterwards came to or was vested in *W. Wiseman*, who conveyed the said rectory or parsonage and advowson to the said *Thomas Sutton*; that if any tithes in kind, or composition in lieu thereof, for any the titheable matters arising upon the said farm, had ever been rendered or paid by any occupier or occupiers thereof, the same were so rendered and paid through the ignorance of such occupier not knowing that the said farm was so exempted or discharged therefrom. He said, he never had in his custody or power any entry or memorandum of any payment of great tithes arising on the said farm, or composition in lieu thereof; that the plaintiff, at the time he bid for a lease for the said tithes, apprehended there was a *modus* of twenty pounds yearly paid for the great tithes of the said farm; and that after and before he obtained such lease, on being informed that there was only a *modus* of ten pounds, ten shillings a-year payable in lieu thereof, he thereupon got an abatement of ten pounds a-year in the rent he had first offered to give for the same; that at the time the lease before-mentioned was granted to the plaintiff, he apprehended that such *modus* of ten guineas was payable in lieu of the great tithes arising on the said farm; but had since found, that no *modus* whatever was payable in lieu of the said tithes, but that the said farm was exempted and discharged therefrom. He admitted, that since *Michaelmas* 1768 he had also been tenant or occupier of *Broadward Farm*, containing five hundred acres of meadow land; and that the same had yearly produced large quantities of hay; but he insisted, that a *modus* of forty shillings

STACEY
against
CREMER.

That a *modus* of 40s. a-year was payable to the vicar of *South Minster*, in lieu of the tithe hay of *Broadward Farm*;

STACKY
against
CREMER.

That a *modus* of
40s. a-year was
payable in lieu of
the tithes of the
Marsh Lands oc-
cupied with
South Minster
Hall Farm.

had been immemorially paid at *Michaelmas* to the vicar of *South Minster*, in lieu of such tithes of hay; that the said yearly sum of forty shillings was paid by the occupiers of *Hall Farm* at *Michaelmas*, as a *modus* and in lieu of tithes for all such part of the lands as were called, and had been known by the name of the *Marsh Lands*, containing one hundred and sixty acres or thereabouts; that they also paid a *composition* of seven or eight pounds half-yearly for the rest of the said lands. He further said, that he had lately caused search to be made, and extracts to be taken from the records in the augmentation office concerning the lands of the said parish, and examinations to be made into all the historical accounts of the county, and into all such plots, surveys, and plans, to which access could be had, as might tend to throw any light upon the subject; and that the result of such enquiries and researches was, that part of the said parish was formerly part of the *Demesne Lands* of the said abbey; but that it did not appear that the said farm was comprised therein, and that therefore he did not then insist upon such exemption. He further said, that although the said farm had been occupied by the same person who was also at the same time lessee of the said tithes, which had occasioned great confusion and mistakes in ascertaining the real nature and right of the said tithes, yet that the said farm had never, he believed, paid tithes in kind, or composition for the same, for the whole thereof, but that the *Marsh Lands* aforesaid, part thereof, had, for time immemorial, been subject only to a *modus* of forty shillings a-year in lieu of the great tithes arising thereon. He further said, that there was then amongst the title deeds and papers relating to the said farm at the *Charter House*, an old map or survey of the said farm, taken above one hundred and sixty years ago, in which there was a line drawn through part of the said map, mentioning that the lands on one side of the line did not pay tithes; and that he believed the said lands were the *Marsh Lands* before described.

The defendant *John Cremer* put in the like answer as occupier of *South Minster Hall Farm* from *Michaelmas* 1770 with the plaintiff.

The cause
heard.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and upon hearing counsel on both sides; and reading the several proofs taken in the cause; and on debate of the matter;

The tithes of
South Minster
Hall Farm de-
clared in kind.

THE COURT ordered the defendants severally to account with the plaintiff for all the titheable matters which had arisen upon the *Hall Farm* during three years, except one hundred and sixty acres thereof, called the *Marsh Lands*, and which the defendant *Gilbert Cremer* had insisted were exempt, and only liable to a *modus* of forty shillings yearly payable in lieu thereof.

THE

DURING THE REIGN OF GEORGE THE THIRD.

THE COURT further ordered, by consent of the parties, as to the one hundred and sixty acres of *Marsh Lands*, and also as to the whole of *Broadward Farm*, that it be referred to the arbitration of *Lloyd Kenyon, Esq.* and *John Lloyd, Esq.* and such third person as they should name, who, or any two of them, should determine, whether the said one hundred and sixty acres of *Marsh Lands*, and the whole of *Broadward Farm*, or either and which of them, was or were not exempted from the payment of tithes, by any and what *modus* or composition in lieu thereof, and likewise as to the costs between the parties; but that in case no award should be made therein by the arbitrators, or any two of them, on or before the end of the first week in *Trinity Term* next, then, and in such case, IT WAS FURTHER ORDERED, that the defendants should account with the plaintiff for the tithes in kind as well arising out of the said one hundred and sixty acres called *the Marsh Lands* as the residue of *the Hall Farm*; and also for the whole of the farm called *Broadward Farm*; and pay the plaintiff his costs: further directions to be reserved until after the report.

STACEY
against
CREMER.

The question as to the liability of *the Marsh Lands* and of *Broadward Farm* to pay tithes in kind, or a *modus* in lieu thereof, referred to arbitration.

On the twelfth of *February* 1778, the plaintiff's counsel informed the Court, that his client and the defendant *John Cremer* had finally ended all matters in dispute between them relating to the tithes in question, by agreeing, as to the tithes of "*the Hall Farm*, that *John Cremer* should, on or before the "*twenty-first day of February* next, pay into court six hundred "*and fifty pounds*, in lieu of all tithes, damages, and interest, "*respecting such tithes of the Hall Farm* up to *Michaelmas* "*1776*; that the tithe of agistment claimed by *Ham Stacey*, as "*lessee of the impropiator*, in respect of *the Hall Farm*, "*should, from the year 1777*, be left to the determination "*of LLOYD KENYON, Esq. and JOHN LLOYD, Esq. and in case* "*they should not agree to JOHN SKYNNER, Esq.; and if the* "*award should be for Ham Stacey the value of such agistment* "*tithe from Michaelmas 1776 to Michaelmas 1777 should be left* "*to the determination of MR. JOSEPH BYGRAVE, of Malden,* "*in Essex, and John Cremer should continue to pay the tithe as it* "*should become due; but if the award should be with John* "*Cremer, then he should go quit of all agistment tithes what-* "*ever, and so continue; the costs of this suit to be settled be-* "*tween the clerks in court and solicitors."*

The agreement was dated the twenty-fourth day of *September* 1777, and was made an order of court, and to be absolutely binding upon the parties.

ROBINSON

HILARY TERM
17. GEO. 3.

ROBINSON, Bart. *against* APPLETON,
Yorkshire, 22d February 1777.

The proprietors of the great tithes of the township of *Disforth*, in the parish of *Topcliffe*, in *Yorkshire*, are entitled to the tithe hay of the said township in kind; and to have the same set out in hay-cocks.

THE plaintiff *Robinson*, as tenant in fee of one undivided moiety; the plaintiff *Gurnell*, as tenant in fee of one undivided fourth part; and the plaintiff *William Morley*, as tenant in fee of the remaining undivided fourth part of the tithes of corn, hay, and clover, arising in the township of *Disforth*, in the parish of *Topcliffe*, in the county of *York*, and their respective lessees of the said tithes, claimed of the defendants the tithes of corn and hay arising in the said township, and to have the said tithes of hay set out in hay-cocks.

The defendants admitted, that the plaintiffs were proprietors and lessees of the great tithes of *Disforth*, as stated in the bill; that the incumbent *Topcliffe* was a vicar; and the plaintiffs, or some of them, entitled to the corn tithes yearly in kind; but they denied, that they, or any of them, were entitled to the tithes of hay, whether made of common grass, or of clover, or of any other grass in kind; and insisted, that there was within the said township a *real composition* of twelvepence an acre, payable at *Christmas* yearly, to the proprietors of the said tithes, in lieu of all tithe hay growing therein; and that they had received such composition in lieu thereof.

The plaintiffs replied; the defendants rejoined; and witnesses were examined on both sides; and upon hearing counsel for all parties; and reading the depositions of several witnesses on both sides; and on full debate of the matter;

THE COURT ordered the deputy remembrancer to take an account of what was due for the tithe of hay and clover demanded by the bill, but without costs.

SMYTHE, *Chief Baron.*
EYRE, *Baron.*
HOTHAM, *Baron.*

HILARY TERM
17. GEO. 3.

JONES *against* HOWELL.

Caermarthenshire, 24th February 1777.

The proprietors of the great tithes of *Llanvinio*, in *Caermarthenshire*, is entitled to the tithes of corn, grain, and hay, on *Finnon Velen Farm* in kind.

THE impropiator of the great tithes of *Llanvinio*, in the county of *Caermarthen*, claimed the tithes of wheat, barley, and other grain, and of hay and clover, which had arisen, for fifteen years past, upon *Finnon Velen Farm*, in the said parish.

The defendant denied, that the plaintiff was the impropriate rector of the parish; and insisted, that he had not by his bill stated any legal title to a portion of tithes within the rectory. He admitted, that he had, for some years past, received the tithes

of

of the corn and grain which had arisen in some part of the parish, but disputed his title thereto, as well as to the tithes of hay or grafs arising within any part of the parish. He admitted, that he had for fifteen years past and upwards, occupied a tenement called *Finnon Velen Farm*, and also other tenements and lands; and that he had yearly gathered thereon wheat, barley, and other grain, as well as hay, grafs, and clover.

JONES
against
HOWELL.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and upon hearing counsel;

THE COURT ordered the deputy remembrancer to take an account of what was due for the tithes in kind demanded by the bill, during the space of *six years* previous to the time of filing the same, with costs to this time.

SMYTHE, Chief Baron.

EYRE, Baron.

HOTHAM, Baron.

PERRY, Baron.

TROTT against RUDD.

EASTER TERM
17. GEO. 3.

Bedfordshire, 21st April 1777.

THE bill stated, that by indenture, dated the twentieth of May 1747, between the Rev. William Musgrave, prebendary of the prebend of *Biggleswade*, and parson imparsonce of the parsonage of *Biggleswade*, appropriated to the said prebend, within the cathedral church of *Lincoln*, of the first part; *Elizabeth Lewis*, spinster, of the second part; *Susannah Lewis* of the third part; and *Edward Rudd* of the fourth part; the said *W. Musgrave*, for the considerations therein mentioned, demised and granted to the said *Elizabeth Lewis*, her heirs, &c. all that the prebend and rectory of *Biggleswade*, with all and singular the houses, &c. in and about the said prebend and rectory, and all the glebe lands, pastures, meadows, tithes, oblations, offerings, and fishings, and all other profits, rents, &c. reserving to him and his successors, prebendaries thereof, the presentation, advowson, nomination, and free disposition of the vicarage of *Biggleswade*, and all tithes, oblations, offerings, and other appurtenances thereunto belonging, to hold to her, her heirs, &c. for the three lives of *E. Lewis*, *S. Lewis*, and *S. Chitty*, at fifty pounds *per annum*; that by indenture of lease and release, dated the nineteenth and twentieth of June 1754, as fully stated in the bill, it was amongst other things recited, that *J. Campbell* intermarried with *S. Lewis* in 1773; that the plaintiff entered into a treaty with him for a lease of the said tithes; that he died and left his widow; that by indenture, dated the twentieth of August 1773, and made between the said *S. Campbell*

The lessee of the prebend and parsonage of *Biggleswade*, in *Bedfordshire*, claims the tithes of corn, grain, hay, clover, clover seed, wool, lambs, a giftment of barren cattle, and wood; and states

TURNER
against
HEMUS.

amongst themselves to raise an annual stipend of thirteen pounds, eighteen shillings, and fourpence, for the maintenance of such chaplain; that the said sum was to be raised according to the proportion of land which each inhabitant occupied within the chapelry; that it had been accordingly raised, and paid by quarterly payments to such chaplain, in lieu of all spiritual demands on the inhabitants; that he had constantly received the said sum of thirteen pounds, eighteen shillings, and fourpence from the inhabitants, and the annual sum of six pounds from the dean and chapter of *Worcester*, or their lessee of the tithes of the said hamlet, in full satisfaction of all tithes and demands on the said inhabitants.

The defendants *Toovey* and *Sir Charles Cocks* answer in like manner.

The dean and chapter of *Worcester* admitted, that if the plaintiff had been regularly licensed and duly nominated he would have been entitled to receive the said several tithes and profits in as ample manner as any of his predecessors had received and enjoyed the same.

The defendant *Boulter*, the vicar of *Kempsey*, said, that he believed the plaintiff was licensed to the chapel by the *Bishop of Worcester*; that the chapel was A CHAPEL OF EASE to the parish of *Kempsey*; that it was formerly enjoyed by the vicar thereof; but that he, the present vicar, did not claim any tithes or spiritual dues belonging thereto, as he did not perform any spiritual office therein.

The plaintiff replied to the answers of the defendants *Hemus*, *Recve*, *Toovey*, and *Cocks*; and the defendants rejoined; and witnesses were examined on both sides; and upon hearing counsel for all parties; and reading the following evidence for the plaintiff, viz. a decree or award of *the vicar general*, dated at *Worcester* the last day of *July* 1529; several depositions of witnesses; a terrier signed "*John Symonds*," curate, and three others, churchwarden and inhabitants, dated in 1585; and reading for the defendants an indenture of lease, dated the twenty-third of *June* 1774, from the dean and chapter of *Worcester* to the defendant *Cocks*; and also two receipts;

THE COURT, which was full, directed an issue to try, "Whether the plaintiff *Richard Turner*, as clerk or chaplain of the chapel of *Stoulton*, in the parish of *Kempsey*, in the county of *Worcester*, is entitled to have, receive, and enjoy, all tithes, oblations, obventions, and other spiritual profits, happening, arising, increasing, and renewing, within the tithing, district, or chapelry of *Stoulton* aforesaid (the tithes of grain and living mortuaries only excepted), or to any and what part of such tithes." The plaintiff in equity to be the plaintiff at law; the action to be tried by a special jury; the judge to indorse any special matter; and further directions to be reserved until after the trial.

CALEY

CALEY *against* WILLIAMSON.HILARY TERM
17. GEO. 3.

Yorkshire, 3d February 1777:

THE bill stated, that *F. Lascelles*, deceased, being seised of the impropriate rectory of *Brompton*, in the county of *York*, and entitled to all the tithes of corn, grain, hay, and other tithes, great and small, arising therein, did, by indenture dated the eighth of *October* 1663, made between him of the one part and *Sir William Cayley, Knight and Baronet*, ancestor of the plaintiff's, of the other part, deceased, for the considerations therein mentioned, grant to him and his heirs for ever, all the tithes of corn, grain, hay, and other tithes whatsoever, arising within *Fowbridge, Tronsdale, and Darcombe*, in the said parish of *Brompton*, and all the tithes of wool and lambs arising in the said parish, and also within *Sawden* in the said parish, to hold the same to and to the use of the said *Sir William Cayley*, his heirs and assigns, for ever; that at the time of such lease, all the said tithes and premises were in the possession or occupation of the said *Sir William Cayley*, his undertenants or assigns; that by virtue of the said indenture, the said *Sir William Cayley* became entitled to have and receive all the tithes thereby granted him *in kind*; that the plaintiff, by, through, or under him was, and ever since the twentieth day of *August* 1764 had been, as tenant in fee simple, fee tail, or some other good estate of inheritance, well entitled to have and receive to his own use all the said tithes arising within *Fowbridge* aforesaid, in the said parish, and parcel of the said rectory impropriate, and to take the same in kind; that the defendant for several years last past had been, and then was, tenant and occupier of a very large farm within *Fowbridge*, consisting of arable, meadow, pasture, and other land; that since *Michaelmas Day* 1772, he had used the said farm, and had had thereon corn, grain, clover, grass seeds, hay, horses, mates, colts, cows, calves, sheep, lambs, poultry, and the other titheable matters stated in the bill, the tithes of which he had refused to pay.

There is a *modus* of 10l. a year payable to the rector of *Brompton*, in *Yorkshire*, in lieu of the great and small tithes of such parts of *Fowbridge Farm* as lies within the said parish.

The defendant said, that *William Bethell* was seised of the manor or capital messuage of *Fowbridge*, otherwise *Fowlbridge*, and of all the houses, buildings, lands, and hereditaments thereto belonging, for and during three lives, under a lease granted to him by the *Archbishop of York*, at twenty pounds a-year; that he, the defendant, on the thirtieth of *October* 1772, contracted and agreed with *William Bethell* for the purchase of one moiety of the manor and the intirety of such part of the capital messuages, buildings, lands, grounds, and hereditaments as were then in the occupation of his, the defendant's, mother; that *Vincent Seller* contracted for the other half, as by indentures of lease and release dated the sixth and seventh of *April* 1773;

CALVEY
against
WILLIAMSON.

stated in the answer, would more fully appear ; that ever since his said purchase, he had been, and then was, seised of and well entitled to one undivided moiety of the manor or reputed manor of *Fowbridge*, and the intirety of such parts of the said capital messuage, buildings, lands, hereditaments, and premises, as were thereby conveyed to him ; that such estate so purchased and conveyed to him consisted, besides the undivided moiety of the manor, of a dwelling-house, barn, and divers closes of land in the answer mentioned ; that part of the said closes and grounds lay within the said parish of *Brompton* ; that the remaining part thereof lay in the parish of *Ebberston* ; that he could not tell the several quantities of the said estate which lay in the said parishes respectively ; that the yearly sum of five pounds, and no more, had been immemorially payable by the occupier of the particular lands before mentioned, not situate in the parish of *Ebberston*, to the rector or the impropiator of the parish of *Brompton*, by half-yearly payments, on *Lady Day* and *Michaelmas Day*, as a *modus* in lieu of all tithes whatsoever, both great and small, arising from such lands not situate in the parish of *Ebberston* and every or any part thereof ; that he had, ever since *Lady Day* 1773, held the farm and lands so purchased as owner thereof, subject to a moiety of the archbishop's rent of twenty pounds a-year ; that he had tendered such *modus* to the plaintiff every half-year since that time, but which he had refused to accept. He admitted, that on the twelfth of *November* 1772, the plaintiff had given notice to his, the defendant's, mother, who then occupied the said farm, that he would for the future take his tithes thereof in kind ; that he, the defendant, was soon afterwards informed thereof ; but that, admitting him to be entitled to tithes in kind, the notice was not regular. He also admitted, that in *July* 1773 the plaintiff had demanded of him the tithe in kind of his hay arising on his said farm for that year ; and that he had refused to set it out ; and he insisted on such *modus* in bar to the relief prayed by the bill.

The plaintiff replied ; the defendant rejoined ; and witnesses were examined on both sides ; and the cause came on to be heard on the tenth of *July* 1776, when the defendants undertook to admit the plaintiff's right to tithes in kind, in case tithes should appear to be due, and to insist only on the *modus* in lieu thereof. The cause was accordingly continued in the paper of causes, and ordered to stand over until *Michaelmas Term* ; the defendant in the mean time to be at liberty to take one or both of his answers off THE FILE, as he should be advised, and to amend the same, by insisting, that the lands in his occupation in the parish of *Brompton* were, together with the lands in the occupation of *Vincent Seller*, mentioned in the answer of the said *Vincent Seller*

Seller to a bill filed against him by the plaintiff, which cause was likewise standing in the paper for hearing, subject to one entire yearly *modus* of ten pounds, payable as in the said defendant's answers in this cause, or one of them, is mentioned, with respect to a *modus* of five pounds set up by the said answers, or one of them, in lieu of tithes claimed by the plaintiff, and by striking out and waiving the *modus* of five pounds insisted on by the said answers or one of them; the said answers to be amended in the several particulars aforesaid, and filed forthwith; the defendant should pay to the plaintiff five pounds, the costs of the day.

Caley
against
Williamson.

The defendant, in pursuance of the said order, paid such costs, and amended his answers in the aforesaid particulars; and the cause came on to be heard the third of *February* 1777; and upon hearing counsel on both sides; and on debate of the matter;

THE COURT ordered a trial at law upon the following issue:
 "Whether, from the time whereof the memory of man is not
 "to the contrary, the yearly sum of ten pounds has been paid,
 "and hath been lawfully and of right due and payable from or
 "by the occupier or occupiers for the time being of a certain
 "capital messuage, called *Fowbridge*, otherwise *Fowlbridge*,
 "within the parish of *Brompton*, in the county of *York*, and all
 "the houses, lands, and hereditaments thereto belonging, now
 "in the occupation of the said defendant and the said *Vincent*
 "Seller, and not situate within the parish of *Ebberston*, to the
 "rector or impropriator of the rectory or parish of *Brompton* for
 "the time being, or his lessee or farmer, by equal half-yearly
 "payments, to wit, on *Lady Day* and *Michaelmas Day*, old stile,
 "as and for a *modus* in lieu and full satisfaction of and for all
 "tithes whatsoever, both great and small, arising on or from such
 "lands within the said manor of *Fowbridge*, otherwise *Fowl-*
 "*bridge*, as are not situate within the said parish of *Ebberston*, or
 "any part thereof." The defendant in equity to be plaintiff at
 law; the action to be tried by a special jury; the judge to in-
 dorse any special matter; and costs and further directions re-
 served until after trial.

The issue was accordingly tried, and the jury found a verdict in favour of the *modus*.

THE COURT, on the twenty-second of *June* 1778, accordingly ordered the bill to be dismissed with costs.

The bill brought by *Caley* against *Seller* was also dismissed with costs.

SKYNNER, Chief Baron.
 EYRE, Baron.
 HOTHAM, Baron.
 PERRY, Baron.

HILARY TERM
17. GEO. 3.

STACEY *against* CREMER.

Essex, 21st February 1777.

The lessee, under the governors of the Charter House, of the rectory of South Minster, in Essex, claims the corn tithes of South Minster Hall Farm and the tithes of hay of Broadward Farm.

THE bill stated, that by indenture of lease dated the twenty-ninth of *August* 1768, made between the governors of the lands, possessions, revenues, and goods, of the hospital of KING JAMES, founded in the charter-house, in the county of *Middlesex*, at the petition and only costs and charges of *Thomas Sutton, Esq.* of the one part, and the plaintiff of the other, they demised to him all those their tithes yearly arising in *South Minster*, in the county of *Essex*, belonging to the rectory of *South Minster*, which then or then late were in the tenure or occupation of *Richard Firebrane*, together with a garden and piece of land, and such liberty of ingress as in the said indenture was mentioned, to hold to him for twenty-one years, at one hundred and seventy pounds a-year, as in the said indenture was more fully mentioned; that the said governors, from the time of their first incorporation, had been, and still were, impropriators of the rectory of *South Minster* and the tithes thereof; that by virtue thereof, they or their lessees had, for all the said time, of common right been entitled to have, take, and receive, all and singular the tithes of corn and grain and other great tithes yearly growing therein in kind; that the defendant *Gilbert Cremer*, before and at *Michaelmas Day* 1768, was the tenant or occupier of *South Minster Hall Farm*, consisting of five hundred acres of arable land; that he held and enjoyed the same to *Michaelmas Day* 1770; that he then surrendered up the possession thereof to the defendant *John Cremer* his son, who ever since had been, and then was, the tenant or occupier thereof; that the defendants, during the said time, had yearly ploughed and sowed the greater part of the lands belonging thereto with corn and grain, clover and other grass seeds, and mowed and made the same into hay, and had yearly therefrom crops of corn, grain, and hay, and other titheable matters, which they had carried away, without setting out the tithes thereof in kind, or permitting the plaintiff to take and receive the same as he ought to have done; that the defendant *Gilbert Cremer*, ever since *Michaelmas* 1768, was tenant and occupier of *Broadward Farm*, being mostly meadow land, and had regularly mowed yearly several loads of hay, the tithes whereof he had refused to pay. The bill therefore prayed an account of the said tithes from *Michaelmas Day* 1768 to *Michaelmas Day* 1771 inclusive, and payment thereof.

The defendant says, that *South Minster Hall Farm* was part of the Demefne Lands of the manor of *South Minster*; that the manor was parcel of the possessions of the monastery of *Saint Byth*, and was therefore tithes free.

The defendant admitted, that before *Michaelmas* 1768 he was tenant or occupier of *South Minster Hall Farm*; that he enjoyed the same until *Michaelmas* 1770; that he then surrendered the possession

possession

possession thereof to his son, who had ever since been the occupier thereof; that the said farm was part of *the Demefne Lands* of *the manor of South Minster*; that the same were formerly part of the possessions of the monastery of *Saint Byth*, in the county of *Essex*; that the said rectory impropriate belonged to the said monastery; that the farm was at the time of the dissolution of the monastery, and then for time immemorial had been held freed and discharged from the payment of great tithes, by prescription or otherwise; and that by the statute 31. *Hen. 8.* the same was, and ever since had been, so exempted and discharged; that the said manor, farm, and premises were, by letters patent dated the sixteenth of *April*, in the fourth year of *Edward the Sixth*, granted to *Thomas Dercy*; that the same afterwards came to *Thomas Lord Dercy*; that *Lord Dercy* sold and conveyed the same to *Thomas Sutton*, founder of *THE CHARTER HOUSE*, by licence dated the third of *May*, in the twenty-seventh year of *Queen Elizabeth*; that *Henry the Eighth*, in the year 1539, granted the rectory of *South Minster*, and the advowson of the vicarage of the said parish, to *Sir Richard Rich*, which afterwards descended and came to his son *Richard Lord Rich*; that *Lord Rich*, on the second of *September* 1575, conveyed the same to *Heron* and *Albany*, from whom the same afterwards came to or was vested in *W. Wiseman*, who conveyed the said rectory or parsonage and advowson to the said *Thomas Sutton*; that if any tithes in kind, or composition in lieu thereof, for any the titheable matters arising upon the said farm, had ever been rendered or paid by any occupier or occupiers thereof, the same were so rendered and paid through the ignorance of such occupier not knowing that the said farm was so exempted or discharged therefrom. He said, he never had in his custody or power any entry or memorandum of any payment of great tithes arising on the said farm, or composition in lieu thereof; that the plaintiff, at the time he bid for a lease for the said tithes, apprehended there was a *modus* of twenty pounds yearly paid for the great tithes of the said farm; and that after and before he obtained such lease, on being informed that there was only a *modus* of ten pounds, ten shillings a-year payable in lieu thereof, he thereupon got an abatement of ten pounds a-year in the rent he had first offered to give for the same; that at the time the lease before-mentioned was granted to the plaintiff, he apprehended that such *modus* of ten guineas was payable in lieu of the great tithes arising on the said farm; but had since found, that no *modus* whatever was payable in lieu of the said tithes, but that the said farm was exempted and discharged therefrom. He admitted, that since *Michaelmas* 1768 he had also been tenant or occupier of *Broadward Farm*, containing five hundred acres of meadow land; and that the same had yearly produced large quantities of hay; but he insisted, that a *modus* of forty shillings

STACEY
against
CREMER.

That a *modus* of 40s. a-year was payable to the vicar of *South Minster*, in lieu of the tithe hay of *Broadward Farm*;

of the tithe hay of *Broadward Farm*;

THE DUKE OF
RUTLAND
against
BARKER.

respectively, from time whereof the memory of man was not to the contrary, constantly paid tithes in kind for them to the owners of the rectory. The bill also charged, that there was not any *modus* payable in lieu of tithes, AND PRAYED, that the right of *the Duke of Rutland* to the said tithes and titheable matters might be established; and an account for the single value of the tithes decreed.

The defendants say, that they are tenants in fee of the lands they occupy, and that the said lands, having been parcel of the possessions of the monastery of *Rivalx*, are tithe free.

The defendants said, that they were owners of the inheritance of all the lands in their several occupations within the said rectory; that they had belonged to the *Abbey of Rivalx*, in the county of *York*; that the said abbey came to the crown by virtue of the statute of the 31. *Hen. 8.*; that the abbey was an ancient abbey from time beyond memory; that the lands and tenements belonging thereto were in the possession of the abbot before and at the dissolution; that the abbot held the same discharged from the payment of all tithes whatsoever, when they were in his own hands, and were not let to tenants; that the abbey had been founded before *the Council of Lateran*; that the convent thereof were of the order of *the Cisterrians*; that by virtue thereof the said lands were discharged from the payment of all tithes or other ecclesiastical dues; that the abbey did, by surrender, in the thirty-first year of *Henry the Eighth*, become vested in the said king, his heirs, and successors, discharged of all tithes or other ecclesiastical dues, in like manner as when the same belonged to the said abbey; that *Henry the Eighth*, by letters patent, made in the thirty-third year of his reign, granted to the then *Earl of Rutland*, in fee amongst other things, the manors of *Helmstrey*, being part of the possessions of the late dissolved *Abbey of Rivalx*; that all the said lands so occupied by them were part of the said dissolved abbey so granted to the said *Earl of Rutland*; and that by several conveyances thereof the same were then become vested in them, and being in the hands and occupation of the owners thereof, were exempted from tithes. They denied, that the said lands had been granted to the abbey subsequent to the *Council of Lateran*.

The cause heard.

The plaintiff replied; the defendants rejoined; and witnesses were examined on the part of the plaintiff only; and upon hearing counsel on both sides; and reading the several proofs taken in the cause;

Tithes in kind decreed.

THE COURT ordered the *Duke of Rutland's* right to the tithes in question to be established; and the defendants to account for all tithes demanded by the bill, with costs.

SMYTHE, Chief Baron.
EYRE, Baron.
HOTHAM, Baron.
PERRY, Baron.

PADDY

PADDY *against* DICKSON.

Yorkshire, 5th June 1777.

TRIN. TERM,
17. Geo. 3

THE vicar of *Kellington*, in the county of *York*, claimed the small tithes thereto belonging, and also all the tithes, both great and small arising upon *Armroid Close*, in the said parish; and stated, that there were in the parish the townships of *Kellington*, *Beal*, *Edgborough*, and *Whitley*; that to the said townships there always had and then belonged very extensive open common fields; that in the said common fields there had been yearly for twenty years past four hundred acres or more sown with turnips, the crops whereof had been taken by the occupiers of such lands; that the defendants had before, and in the year 1770, occupied houses and lands in the parish, and had for three years past grown turnips thereon; that they had also kept, fed, and depastured thereon a number of barren and unprofitable cattle; that all the turnips or the greater part thereof had been in each year sold by the defendants; that other parts had been drawn and sold; that other parts had been fed and depastured by the cattle and sheep of other persons taken in by the defendants for hire; that other parts thereof had been fed and depastured by the other cattle and sheep of the defendants, and afterwards sold. The bill therefore prayed an account of the *single value* of the tithes of turnips and of agistment (*a*), except from the defendants *William Dickson* and *William Bever* before *Michaelmas Day* last, they having paid the plaintiff the same to that time, and payment of what should appear due thereon.

The vicar of *Kellington*, in *Yorkshire*, claims the small tithes of the parish in kind; the great and small tithes of *Armroid Close*; the tithes of turnips grown in the common fields of the townships of *Kellington*, *Beal*, *Edgborough*, and *Whitley*, and the tithes of feeding sheep and barren cattle thereon.

See another cause, *Easter* 30. Geo. 3.

The defendants admitted, that the plaintiff was entitled to the tithes of turnips, agistment, and other small tithes in kind, except where any *modus* was payable in lieu thereof, and also except from the lands in *Beal* called *Board Lands*, the great and small tithes of which belonged to *Samuel Crompton*, out of which the plaintiff received the usual *moduses* and customary payments for cows, calves, foals, and bees only. They also admitted, that he was entitled to all the tithes yearly arising from *Armroid Close*. They also admitted, that within the said parish there were the several townships or hamlets of *Killington*, *Beal*, *Edgborough*, and *Whitley*; that within the same there were many extensive open common fields, wherein turnips had been sowed yearly, to wit, in the common open fields of *Killington* and *Beal* about twenty years last past, and of *Edgborough* about thirty years, amounting in the whole to three hundred and sixty-six acres; that the price or value of an acre of such turnips there to be sold, one with another, was worth about one pound, ten shillings; and that the crops thereof had been

The defendants admit that the vicar is entitled to the great and small tithes of *Armroid Close*; and to the tithes of turnips, agistments, and other small tithes except in those lands in the township of *Beal* called *Board Lands*, and except for those things for which *moduses* are payable.

(a) See the case of *Almond v. Trinity College*, vol. 2. page 442.

PADDY
against
DICKSON.

taken away by such occupiers of the lands. They also admitted, that they had held and occupied for several years past houses and lands in the parish, and had growing on the lands turnips, which they depastured each year with cattle or sheep; that they had also kept and depastured some but not many barren and unprofitable cattle; and they set up the *modus*es after-mentioned, in lieu of all tithes of herbage or depasturage of sheep and lambs from time to time kept, fed, and depastured in the parish.

The defendants *W. Dickson* and *W. Bever* said, that they had paid the plaintiff all that was due to him from them in lieu of such tithes of herbage or depasturage in each year, according to the said ancient usage; and that the plaintiff had accepted the same accordingly.

And they set up certain *modus*es, and particularly 1d. a-head for all sheep bought before the thirteenth of February in every year, and sold before the shearingday, in lieu of the tithe herbage and pasturage of such sheep;

The defendant *Richard Dickson* said, that he was ready, and by his answer offered to pay the plaintiff what was due to him, in lieu of the tithes of herbage and depasturage for 1771, pursuant to such *modus*es, but that he had refused to accept the same, THAT IS TO SAY for oblations or *Easter* offerings, each person above the age of sixteen years, being an inhabitant, had been used to pay twopence; for the wages of servants, twopence for every pound of such wages, by the master; for each messuage, and the tithes of any garden or gardens thereto belonging, fourpence halfpenny; for each cottage and the tithes of any garden or gardens thereto belonging, twopence halfpenny; for the tithe of geese, every tenth goose at *Michaelmas*, or one penny for each goose under ten, and so in proportion for any number above ten; for pigs, every tenth pig; for orchards, the tithe of fruit in kind; for each swarm of bees, one penny; for one fowl, one penny; and the same sum for each foal, foaled in the same year; for a milch cow and calf, three halfpence, in lieu of the tithes of milk and calves; for a cow that does not calve within a year, called a stripped milch cow, one penny; for wool, every tenth fleece, the owner taking two fleeces and the tithing-man one out of the remaining eight; for lambs, every tenth lamb; for sheep bought before the thirteenth of February and clipped before they were sold the full tithes of wool, and for sheep bought before the thirteenth of February, and sold after that time before clipped, one penny for each sheep, as a *modus* or ancient customary payment for the tithes of herbage or depasturage thereof; for ewes and lambs in case they were sold before clipped, one penny for each ewe, and threepence for each lamb, as a *modus* or customary payment for the tithes of such herbage or depasturage.

and insist that sheep of their own depastured on turnips are tithable according to *modus*, and not in kind;

The defendants set forth the number of acres of turnips they had sold in each year to different persons; the price for which they had sold the same; the quantities which were fed with milch

cows

cows, beasts, and sheep; the quantities that had been eaten by their own sheep and cattle; and they insisted, that the turnips that had been eaten by their own sheep or lambs were not titheable in kind, but that the aforesaid *modus*es were payable in lieu thereof, and ought to be accepted by the plaintiff in satisfaction of such herbage or depasturage, whether they be depastured on turnips or other pasturage. They further said, that none of the turnips which had grown in their grounds within the said parish, and been sold by them, had been drawn or taken out for any other purpose than to be eaten by cattle or sheep as aforesaid; nor had they been fed or depastured by the cattle or sheep of any other person taken in for hire, or by any cattle or sheep of defendants there fed for sale, and afterwards sold therefrom, other than as aforesaid.

PADDY
against
DICKSON.

whether the turnips were so eaten on the ground or drawn and afterwards given to the cattle.

The plaintiff replied; the defendants rejoined; and witnesses were examined on each side; and upon hearing counsel; and reading the answers; and the several proofs taken in the cause; and on full debate;

The cause heard.

THE COURT ordered the deputy remembrancer to take an account of the tithes of all the turnips drawn by the defendants respectively, and eaten by the barren and unprofitable cattle kept, fed, and depastured by them on the said lands occupied within the said parish of *Kellington*, during the time demanded by the bill, except sheep; AND ALSO an account of the tithes of agistment and depasturage of all the sheep bought in by the said defendants respectively, before the thirteenth day of *February* in each of the said three years, and sold out by them before the shearing thereof; AND ALSO an account of what was due for the agistment and depasturage of all sheep by them kept, fed, or depastured on their lands and grounds during the time aforesaid, except those bought in and sold out as aforesaid, according to the *modus* of one penny, in the answer mentioned, in lieu of such tithes of agistment and depasturage; costs and further directions to be reserved till after the report.

The tithes of those turnips which had been drawn and eaten by barren cattle decreed.

The *modus* of 1d. in lieu of the tithe pasture of a sheep bought in and sold as aforesaid decreed.

The tithe of other sheep decreed in kind.

SMYTHE, *Chief Baron*.
EYRE, *Baron*.
HOTHAM, *Baron*.
PERRYN, *Baron*.

DAUBENEY against APPLIN.

Dorsetshire, 13th November 1777.

MICH. TERM,
18. GEO. 3.

THE rector of *Ibberton*, in the county of *Dorset*, claimed the great and small tithes which had arisen therein, since he became incumbent, in the month of *April* 1775, and insisted,

The rector of *Ibberton*, in *Dorsetshire*, claims the tithes of milk, that he is entitled to

wool, lambs, and agistment of sheep in kind and states that

DAUBENEY
again
APPLIN.
the tenth fleece
of all sheep
though fed part
of the year in a-
nother parish;
an agistment
tithe of all sheep
depaſtured be-
tween ſhearing
day and ſhear-
ing day;
the tithe lambs,
nor on Saint
Mark's Day, but
when weaned.

that he was entitled to every tenth fleece of wool ſheared in the parish from all ſheep kept thereon notwithstanding they might have been kept part of the year in another parish; that he was alſo entitled to an agiſtment tithe of all ſheep kept in *Ibber-ton* after ſhearing time, and removed from thence and ſold or otherwiſe diſpoſed of before the next ſhearing time, and not again ſheared in the ſaid parish; that he was not obliged to take his tithe lambs till they were weaned at the time when the occu- pier weaned his nine lambs; that *St. Mark's Day* was too early for lambs in that parish to live without their dams; that no lambs were ever in that parish taken from their dams and weaned as early as *St. Mark's Day*; that the defendants did not wean the lambs claimed by the plaintiff to be tithed, until after *Lammas*; and that the plaintiff ought to have ſuch tithe lambs ſet out to him in kind, at the time the defendants weaned their lambs, or to be paid the value of them at that time.

The defendants deny, that the plaintiff is enti- tled to more than a moiety of the tithe lambs drop- ped, and ſheep fed from *Michaelmas* to *Lady Day*; to no tithes of wood except in *Park Wood*;

to only 3d. a cow and 2d. a heifer in lieu of tithe milk; and that he is obliged by the cuſtom of the pariſh to take the tithe lambs on *Old Saint Mark's Day*.

The defendants denied, that the plaintiff was entitled to more than a moiety of the tithes of lambs dropped in the parish by ewes fed from *Michaelmas* to *Lady Day* in another parish, or to more than a moiety of the tithe of wool ſheared from ſheep fed from *Michaelmas* to *Lady Day* in another parish; or that he was entitled to the tithe of barren and unprofitable cattle, horſes, mares, and colts, or to the tithe of wood, ſave to the coppice wood in a wood in the parish called *Park Wood*; but they admitted, that he was entitled to the tithes of calves, of all milch cows and heifers depaſtured, and of all lambs dropped by ewes that had not been depaſtured out of the parish from *Michaelmas* to *Lady Day*; to wool ſheared in the parish from ſheep that had not been depaſtured out of the parish from *Michaelmas* to *Lady Day*; to the agiſtment of the tithe of ſheep not yielding wool or lambs; and to the tithes of calves, lambs, pigs, and wood out of *Park Wood*, but to no other wood ariſing therein; and they ſet forth an account of the quantities of land they ſeverally occupied, with the titheable matters which had ariſen therefrom; and they ſeverally diſtinguiſhed the number of ſheep they had kept in the parish, during the whole year, and the number of ſheep put to keeping out of the parish from *Michaelmas* to *Lady Day*; and inſiſted on a *modus* of threepence a cow; and another *modus* of twopence a heifer, in lieu of tithe milk. They alſo inſiſted, that by cuſtom time out of mind in the pa- riſh, the rector was obliged to take and receive his tithe lambs at *Old Mark's Day* before they were weaned; that the farmer was only obliged to wean his own nine lambs; that *Old Saint Mark's Day* was not too early for lambs in the ſaid parish to live with- out their dams; that lambs in that parish were taken from their dams and weaned as early as *Mark's Day, Old Stile*; and that the plaintiff's predeceſſors, rectors of the ſaid parish, when

when they took the tithes of lambs in kind, took them on *Old Mark's Day*, according to the custom aforesaid; but they admitted, they did not wean their own lambs, claimed to be titheable by the plaintiff, till after *Lammas Day*, about which time the defendants and the rest of the parishioners of the parish weaned their lambs, but they said that many of the lambs bred in the parish weaned themselves before that time; and they insisted they ought not to set out to the plaintiff their tithe lambs in kind, at the time they weaned their respective lambs and took them from their dams; and that they ought not to account with him for their said tithe lambs, according to their worth when taken from their dams and weaned, or otherwise than for what they would have been worth, had they been taken and weaned at *Old Mark's Day* as aforesaid.

DAVERNEY
against
APPLIN.

The plaintiff replied; the defendant rejoined; and witnesses were examined on the defendant's part; and upon hearing counsel for both sides; and reading the depositions of several witnesses; and several entries from a book belonging to *Charles Baker*, clerk, late rector of the parish;

The cause
heard.

THE COURT ordered the bill to be dismissed, so far as the same related to the demand for the tithes of wood, with costs, to be taxed for the defendants.

The bill, as to
tithe wood, dis-
missed with
costs.

THE COURT further ordered a trial at law upon the following issues:

Issues directed
to try, whether

FIRST, "Whether there is not, and from time whereof the memory of man is not to the contrary, hath been a *modus* or customary payment of threepence a cow, paid and payable to the rector of the parish of *Ibberton*, in the county of *Dorset*, for the time being, by the occupiers of lands within the said parish, on the feast of *Saint Bartholomew*, for and in lieu of the tithe of milk of their respective cows kept by them within the said parish, or the titheable places thereof."

there is a *modus*
of 3d. a cow;

SECONDLY, "Whether there is, and from time whereof the memory of man is not to the contrary, hath been a *modus* or customary payment of twopence an heifer, paid and payable to the rector of the said for the time being, by the occupiers of lands within the said parish on the feast of *Saint Bartholomew* in each year, for and in lieu of the tithe milk of their respective heifers kept by them within the said parish or the titheable places thereof."

and 2d. an
fer, in lieu
tithe m.lk.

The defendants in equity to be plaintiffs at law, and the judge to indorse the special matter on the *posita*.

DAUBENBY
against
APPLIN.

The other tithes
decreed with

THE COURT further ordered the defendants to account for the several other titheable matters demanded by the bill, with costs.

The rector re-
fuses to try the
issues.

The defendants
ordered to ac-
count for milk
according to the
modus.

The plaintiff waived the trial of the issues, and consented to pay the defendants their costs occasioned by the setting off the *modus*; and on the twelfth of *February* 1778, it was referred to the deputy remembrancer to take an account of what was due to the plaintiff from the defendants, by reason of the said two several *modus*; and that he should include the account of the said *modus*.

The report con-
firmed.

The deputy made his report, dated the thirteenth of *July* 1778; and on the fifteenth the report was confirmed, and the defendants ordered to pay the money reported due, with subsequent costs.

SKINNER, Chief Baron.
EYRE, Baron.
HOTHAM, Baron.
PERRY, Baron.

MICH. TERM,
18. GEO. 3.

BOSWORTH, D. D. against LIMBRICK.

Gloucestershire, 17th November 1777.

The rector of
Tortworth, in
Gloucestershire,
claims the whole
of the milk milk-
ed on each tenth
natural day, as
well in the morn-
ing as the even-
ing, in lieu of
the tithe of the
milk milked du-
ring the whole
nine preceding
natural days.

S. C. Rayn. 809,
934.

THE rector of *Tortworth*, in the county of *Gloucester*, claimed all the tithes of the parish, as well great as small, in kind; and stated, that the defendant *Limbrick* had ever since the year 1773 occupied lands therein, on which he had kept a number of milch cows, which had yielded milk; that the defendant *Cullimore*, since the year 1773, had occupied lands therein, that he had made hay, raised potatoes, and fed milch cows, which had yielded both milk and calves; but that neither of the said defendants had set out or paid the tithes thereof, or of the other titheable matters on their said lands; that the defendant *Cullimore* and his wife had resided in the parish, and had three children above sixteen years of age, as part of their family; for whom twopence a-head were due for *Easter offerings*. The plaintiff then charged that he was entitled to the whole of the milk milked on each tenth natural day, as well in the morning as in the evening, as and for the tithe of the milk of the cows for the whole nine preceding natural days, and insisted, that if the tithe of the milk of the whole herd of cows was to be set out at every tenth meal of milking only, the owners of such cows would claim, contrary to natural justice, an option to set out the tithe either on the tenth morning's meal, or on the tenth evening's meal, as he pleased, and then, by setting out the tenth evening's milk for tithe, would greatly injure the plaintiff in

in receiving his full tenth of the milk; for that by the usual way of milking cows, the milk of each cow milked in the afternoon was on an average near one third less in quantity than the milk milked from the same cows in the morning of the same day; that the law gave him, as rector, the full tenth part of the milk milked, but that by receiving an evening meal, as and for the tithe, he would receive less than a full tenth of the milk of such cows; and that the true and only way for a person entitled to the tithes of milk to receive a full tenth thereof, was that the meals of the tenth natural day, both in the morning and in the evening, should be set out for the tithe of such milk. The bill then further charged, that whenever the defendants had set out the tithe of any milk in kind, they had always set it out in an evening and never in a morning, or on the tenth natural day as they ought to have done. The bill also charged, that the time when the milk of the cows that have calved shall first begin to be titheable in each succeeding year, is or ought to be computed from the time when the first cow after calving in any new year is brought to the pail and milked, and so of every cow after calving, and not by the unfair practice of milking a few cows which are in effect dry, as being then big with calf, in order to make the tithing day throughout the year to fall on one and the same natural day throughout the parish, such cows being never milked unless for such an unfair purpose. The plaintiff further charged, that the evening's meal, which they had pretended to set out, had been considerably less than it ought to have been, which had been occasioned by the unequal space of time of milking in the morning and evening on those days when the tithe had been pretended to be set out, for that such space of time between the morning and evening's milking was always longer on the days which were not tithe days, than on those days which were called tithe days, whereby a considerable less quantity than the full tenth of such milk had been set out as the tithe thereof, which the plaintiff conceived he was not bound to accept. The plaintiff also said, that the defendants, on the days they called *tithing days*, milked their cows very late in the morning and early in the afternoon, and not at the hours when they milked their cows on other days which were not tithing days, by which mode of milking on tithing days the plaintiff was greatly injured. He also set forth the many unfair practices which the defendant *Cullimore* had committed respecting tithe hay, potatoes, and calves, and also many other vexatious frauds, by which the defendants had deprived him of his due right to the said tithes. He said, that being desirous that the mode of tithing milk should be settled, he had accepted the tithe thereof in the manner the other occupiers of land in the parish had thought fit to set it out, in order that it might not be wasted or spoiled, pending the suit, and hoped that as it was for the mutual

BOSWORTH
against
LIMBRICK.

and states,
that the cows
produce much
less milk in the
evening milking
than in morning
milking;

that the defend-
ants had set out
the tithe milk
of an evening
and never of a
morning;
that each cow
ought to begin
to be titheable
when brought to
the pail after
calving;

that even the e-
venings milk
which they had
set out was con-
siderably less than
it ought to have
been.

BOSWORTH
against
LIMBRICK.

tual benefit of all parties, it would not prejudice the right he sought to establish. The bill therefore prayed, that *Limbrick* and *Cullimore* might be decreed to account for the single value of the said tithes; and that *Stack* might be ordered to open the gap so that the plaintiff might be enabled to bring home his said tithes through the same, and over and along the three fields mentioned in the bill.

The defendants admit that they are cow-keepers in the parish.

The defendants *Limbrick* and *Cullimore* left the plaintiff to prove that he was duly presented to the rectory of *Tortworth*; and said, that they occupied in the said parish, and also in several adjoining parishes, lands of a great yearly value; and that they had kept thereon milch cows, which had yielded considerable quantities of milk therein.

The defendant *Cullimore* says, that the plaintiff gave him notice to set out his tithe of milk, from and after the fifth of *April*, in kind;

that on the afternoon of the tenth of *April*, he set out the tenth of the milk that had been milked, making the morning milk of the sixth of *April* the first meal.

The defendant *Cullimore* said, that in *July* 1771, he received notice in writing from the plaintiff, that from and after the fifth day of *April* then next, the composition between them for tithes should cease on the then terms; and that the tithes should be taken in kind, unless he would make such recompence for them as the plaintiff should approve; that the plaintiff was very exorbitant in his demands; that he therefore gave him notice in writing, that he should set out the tithe of milk at his usual milking places in the afternoon of the tenth of *April*, then instant, at his usual time of milking in the afternoon; that the same would in like manner be continued to be set out as it should become due; that he accordingly, in the evening of that day, set out the tithe of his milk then milked, being the tenth meal, computing the same from the night of the fifth of *April* 1772, making the morning's meal of the sixth of *April* the first meal, from the time the former composition was by the plaintiff's notice to cease; that the same was the regular and usual mode of setting out the tithe of milk, it being by every tenth meal, and not of all the milk milked on the tenth natural day; and that having so set out his tithe milk in the afternoon of the said tenth of *April*, the plaintiff sent for and took away the same.

The defendant *Limbrick* says, that his cows were driven on his lands on the evening of the fifth of *May*, and that on the tenth of *May*, he set out the tithe milk, as being the tenth meal after his cows first fed on the land;

The defendant *Limbrick* said, that he entered on his said lands in *Tortworth*, on the four several days in the answer mentioned; that his cows were brought on his lands in the evening of the said fifth of *May* 1773; that he then gave the plaintiff notice in writing that he had that evening brought on his lands in *Tortworth* ten cows; and that he should set out the tithe milk, which would be due to the plaintiff on *Monday* the tenth of *May* in *Floodgate Mead*; that he should afterwards continue to set out the said tithe milk as it should become due, at the usual milking place; that in the afternoon of that day he set out the milk of his said cows then milked, as and for the tithe,

tithe, the same being the tenth meal of milk next after his cows had been brought into the said parish.

BOSWORTH
against
LIMBRICK.

The defendants admitted, that *Tortworth* was a dairy parish; and said, that they had, both in the years 1772 and 1773, constantly set out the tenth meal of milk, such meal being *an evening meal* only; and they insisted, that the tithe of milk ought not to be taken in the morning as well as evening of the tenth natural day, because then the calves must on that day go without milk to feed them; that there would be no whey to give the pigs, which in dairy farms is almost the only thing to give them; that a calf at ten days old would drink more milk than one cow would give; and that they were generally kept seven weeks if not more, for the butcher. They further said, that the rector was entitled to the tithe of milk as long as the cows gave any; that it was usual in all dairy farms to milk their cows as long as they gave any milk, all the year round; that, as the rector was entitled to every tenth meal, they had duly set out the same; and that such milking their cows all the year round could not be to prejudice the plaintiff, because it was always usual so to do, and the cows were thereby the better; that such milking was necessary also on account of the cows calving at different times of the year, those which calve in the summer giving milk all the winter, and in large dairy farms the cows calve in almost every month in the year, so that if cows were not to be milked in the winter they must necessarily suffer great loss. They further said, that at the usual time after the calving, when each cow came to the pail, they had regularly on the next tithing milk day set out the milk of such cows with that of the others which had been before in milking, which was giving the rector a considerable advantage. They insisted, that the legal mode of tithing milk was by setting out every tenth meal of the whole herd, and not by setting out the tenth meal of each cow, computed from the time of its first coming to the pail. They denied, that they had pretended that the plaintiff was entitled to the tenth evening's meal only, and no other for his tithe, but said that he was entitled to the tenth meal, whether it happened to be in the morning or evening; and that they had severally set out on every fifth day the tenth meal of their whole respective herds. They also denied, that in order to prejudice the plaintiff they had used any unfair practices to lessen the quantity or value of his tithes, or that on tithing days they had milked later in the morning and sooner in the evening than was usual on other days; for on the contrary their orders to their servants always were to use no unfair dealings whatever to prejudice the plaintiff, and then stated the particular hours in the morning and evening, in the several various seasons of the year, when they began their several and respective milkings as fully mentioned in their answers.

that the said meal was an evening meal only;

that tithe milk ought not to be set out in the morning as well as evening;

that the legal mode of setting out the tithe of milk was by setting out every tenth meal of the whole herd.

BOSWORTH
against
LIMBRICK.

The defendant *Cullimore* set forth the other titheable matters and things he had on his said farms and lands, and spoke fully as to the farm occupied by the defendant *Stock*, and respecting the way through the said farm, which the plaintiff said he had a right to take his tithes through, and denied the plaintiff had a right to go over the closes in the bill mentioned.

The defendant *Stock* denied the right of the plaintiff, or of any other person to go over the closes occupied by him. He admitted, that he did cause the gate to be taken down and the gap hedged up, and insisted, that he was justified in so doing, and in preventing the plaintiff from going over any of the said closes, he having no right so to do.

The plaintiff replied ; the defendant rejoined ; and witnesses were examined on both sides ; and upon hearing counsel on the twenty-seventh day of *June* last for both parties ; and reading the depositions of several witnesses on both sides ; and hearing counsel several days ; and reading the notice to the plaintiff, signed *Joseph Limbrick*, dated the fifth of *May* 1773 of ten cows to be milked ; and hearing the plaintiff's counsel in reply on the second day of *July* following ; the Court ordered the cause to stand over for the judgment of the Court ; and the cause standing in the paper of causes accordingly ;

The bill as against
Stock dismissed.

The bill, as against *John Stock*, was dismissed with costs.

Cullimore ordered
to account for
tithe hay.

THE COURT ordered *Joseph Cullimore* to account for the tithe of the hay demanded by the bill.

Cullimore and *Lim-*
brick to account
for tithe of po-
tatoes, agist-
ment, fruit, and
vegetables.

THE COURT also ordered *Joseph Cullimore* and *Joseph Limbrick* to account for the tithes of potatoes, garden stuff, and fruit, the agistment of barren and unprofitable cattle, and for *Easter* offerings, without costs.

AND ALSO for
the tenth morn-
ing's meal of
milk, and the
tenth evening's
meal of milk.

THE COURT, with respect to the plaintiff's claim of the tithe of milk, declared, that the plaintiff was entitled to the tenth morning's meal of milk, and to the tenth evening's meal of milk ; and ordered the defendants *Joseph Cullimore* and *Joseph Limbrick* to account for the same accordingly, during the time in the bill mentioned, and pay what should appear due on such account, with costs.

The defendants
appeal to the
house of lords
against the de-
cree, as to tithe
milk, but the
appeal is dis-
missed ; and the
decree affirmed.

The said defendants appealed to THE HOUSE OF LORDS against this decree respecting tithe milk ; and the appeal was heard on the second of *February* 1779, when the said appeal was dismissed, and the decree therein complained of affirmed ; and on the twenty-third of *February* the said order of the house of lords was made an order of this court.

EYRE, Baron.
HOTHAM, Baron.
PERRYN, Baron
STOCKDALE

STOCKDALE *against* COLEMAN.

Norfolk and Suffolk, 17th November 1777.

MICH. TERM,
18. GEO. 3.

THE bill stated, that the plaintiff was, about the fifteenth of October 1771, instituted into the vicarage of *Mendham*, part in the county of *Suffolk* and part in the county of *Norfolk*, and had by virtue of some ancient endowment, prescription, or other lawful means, thereby become lawfully entitled to the tithes of hay, clover, and other grafs, turnips, cows, calves, milk, agistment for barren and unprofitable cattle, eggs, chickens, poultry, pigeons, turkies, pigs, sheep, wool, lambs, fruit, garden stuff, orchards, honey, wax, and all other vicarial tithes in kind; and charged, that the defendants had for several years past occupied farms in the said parish, on which they had yearly mowed hay, hay grafs, clover, clover grafs, and other grafs; that they had kept thereon cows which had produced calves and milk; that they also had turnips which they pulled and fed a number of cattle with; that they had chickens, turkies, and other titheable matters, the tithes of which they had refused to pay.

The vicar of *Mendham*, which is part in the county of *Suffolk* and part in the county of *Norfolk*, claims the tithes of the parish in kind.

The defendant *Coleman* said, that the plaintiff might have been instituted and inducted into the vicarage, but that it was subject to a bond of resignation in favour of an infant son of the late vicar, and grandson of the present patroness of the vicarage; and that he was not lawfully entitled to the tithes claimed by the bill, except as after mentioned. He admitted, that he had, since the twelfth of *August* 1774, occupied a farm and a large garden in the parish; and had had thereon the several titheable matters stated in the bill; but he insisted, that the said farm was tithe free, as having been parcel of the *Priory of Mendham*, and time out of mind legally discharged of tithes, except as after mentioned; that he held the said farm, and other lands out of the parish, under a lease from *William Rant*; that it consisted of a messuage called *the Scite of the Priory*, a large garden, and one hundred and fifty-eight acres of arable, meadow, and pasture land, parcel of the said priory lands; that the *Suffolk* part of the said vicarage, which included the farm, was formerly parcel of *the Priory of Mendham*; that the said priory was dissolved by *Henry the Eighth*; that the said messuage and all the lands thereto belonging, except three acres, part of four acres aftermentioned, and two acres lying in *Withersdale*, and adjoining to *Mendham*, were parcel of that priory; that the said premises, after one or more alienations thereof, came from the crown into the family and predecessors of the said *William Rant*; that the impropiator of *Mendham* never had demanded any great tithes from *the Priory Lands*, but had constantly received a fee farm rent of eighteen pounds, eighteen shillings, in

The defendant *Coleman* says the plaintiff had accepted of the vicarage under a bond of resignation; that he, the defendant occupied a farm in the parish, which was tithe free, as having been parcel of the priory of *Mendham*; that he also held a farm called *the Scite of the Priory*, but that it was not in the parish of *Mendham*; that that part of the vicarage which lay in the county of *Suffolk* was formerly parcel of *the Priory*; except two parcels of three acres and two acres in *Withersdale*; that a fee farm *Priory Lands*.

rent of 18l. 18s. was payable for the great tithes of lieu

STOCKHALL
against
COLEMAN.

that a gross sum
of 16l. 10s. cal-
led *herbage money*,
had been ratea-
bly collected from
the householders
of *Mendham* by
the vicar, in lieu
of all vicarial
claims ;

that the tithes
of turnips and
hemp had been,
about forty years
before, bestowed
gratuitously on
the vicar ;

that no claim
had ever been
made for small
tithes for the
Priory Lands ;

that the payment
of the *herbage*
money appears
by a terrier in
the vicar's pos-
session ;

that tithes are
only payable for
six acres in
Mendham Field,
and two acres
in *Withersdale*,
at the rate of
2s. 6d. an acre,
which he had
tendered.

lieu thereof. He further said, that the vicar had never claimed any tithes for *the Priory Lands*, but that there had been immemorially a proportioned yearly settled rate upon all the houses and lands of the parishioners of *Mendham*, amounting to sixteen pounds, ten shillings ; that the said sum had been collected by the vicar, under the denomination of *herbage money*, and that he had received the same by way of *modus*, in full satisfaction of and in lieu of all claims and demands for tithes as his glebe was not sufficiently profitable to maintain him. He further said, that turnips were first introduced into the country about forty years ago, being then a new grain ; and that the parishioners of the parish, in consideration of the then vicar's (*Seth Turner*) poverty, and his large family, thought of increasing the income of the vicarage ; that they agreed to give him the tithe of turnips as a voluntary gift ; that a few years afterwards, through the like motives, they agreed to give him the tithe of hemp ; that the said vicar and his successors had been since contented with and thankful for the said gifts, until the present vicar, or his next immediate predecessor, under colour of such gifts, had, after having destroyed the *modus* of sixteen pounds, ten shillings, set up a claim to other tithes from the parishioners. He further said, that from time of the dissolution of religious houses in the reign of *Henry the Eighth*, until the present vicar's time, no vicar had ever insisted on tithes in kind from *the Priory Lands*, nor set up any claim thereto, except the last vicar thereof ; but that the last vicar, being the son of the late patron of the vicarage, had constantly signed the terriers in which *the herbage money* was set forth, in words to the effect following :
“ There is a settled payment of *herbage money* amounting to
“ sixteen pounds, ten shillings, *per annum*, except only that
“ in some old terriers the *herbage money* is mentioned to be
“ eighteen pounds, ten shillings ;” that the said supposed variation was a mistake, it standing in the terriers for the last thirty or forty years and more, only “ sixteen pounds, ten shillings ;” that the plaintiff and his predecessors had constantly collected the said sixteen pounds, ten shillings, proportionably of the occupiers, and no other sum ; that no tithes whatever, except the tithes of turnips and hemp, had ever been demanded of him till lately for or in respect of *the Priory Lands* in his occupation, nor any great tithes, or composition in lieu thereof, ever paid for the same, except, to wit, three acres, parcel of the five acres in the field in *Mendham*, in *Suffolk*, doled out, and three acres, parcel of four doled out in the same field, and two acres in *Withersdale*, in *Suffolk*, the adjoining parish ; that the said six acres were titheable to the impropriator of *Mendham* ; that two shillings and sixpence an acre had been paid the plaintiff, or to the former vicars for the said three acres, parcel of the five acres, when sown with turnips, but not when sowed

sowed with hay seed ; that he had offered to pay the plaintiff in like manner for the same his proportion of the said rate, *to wit*, ten shillings and sixpence at *Easter*, and five shillings at *Lammas*, up to *Lammas* and *Easter* last, except ten shillings part thereof.

STOCKDALE
against
COLEMAN.

The other defendants denied that tithes were payable in kind for the agistment of cattle, young stock bred upon their farms, or beasts of the plough fed upon turnips after they were pulled. They admitted, that about the eleventh of *March* 1775, the plaintiff had given them notice to set out their tithes in kind, and said that they had always been ready to pay him the customary payments by way of *modus* for each farm or house they respectively occupied, as set forth in their answers ; and insisted, that the concessions respecting turnips and hemp could not constitute any right in the vicar, or be binding upon them, so as to destroy the *moduses* or *real compositions* which had immemorially existed.

The other defendants insist, that no tithes ought to be paid for the feeding of cattle or turnips, and that the concessions which had been made to the vicar could not destroy the *real composition*.

The plaintiff replied ; the defendants rejoined ; and witnesses were examined on both sides ; and upon hearing counsel for all parties (except the defendants *Reeve* and *Hill*) ; and on reading several proofs taken in the cause ; the answer of the defendant *Coleman* ; an affidavit of service of *subpoena* to hear judgment on *Reeve* and *Hill* ; and a survey from the first fruits office of the twenty-sixth year of *Henry the Eighth* of the lands in *Mendham*, an issue was directed to try, " Whether the plaintiff, as vicar of *Mend-*
" *ham*, was, at the time of his institution and induction, endowed
" with all and singular the several species of titheable matters
" and things demanded by the bill, which arose, renewed, or
" increased upon the lands and grounds within the said parish
" and titheable places thereof." The judge to indorse any thing special that shall arise on such trial, and this decree to be binding on *Reeve* and *Hill*, unless cause be shewn to the contrary.

The cause heard.

An issue directed to try whether the vicar was endowed with the tithes demanded by the bill.

The decree being duly served on *Hill* and *Reeve*, and they not having paid the five pounds costs, it was on the twentieth of *January* 1778, made absolute against the said defendants. But on the twentieth of *May* 1778, the plaintiff, by leave of the Court, and with the consent of the defendant, dismissed his own bill without costs.

The plaintiff, by counsel, dismisses his bill without costs.

PLUMBE against PICKERING.

Lancashire, 17th November 1777.

MICH TERM,
28. GEO. 3.

THE rector of *Aughton*, in the county of *Lancaster*, claimed the great and small tithes in kind, particularly of hay, hay grass, clover, clover grass, and potatoes, and stated, that the defendants had refused to come to any account with him, under pretence of some *modus* or *composition* ; but that if any composition was

The rector of *Aughton*, in *Lancashire*, claims the tithes, particularly of hay and potatoes in kind, and insists, that

as the land from which they had arisen had been, within the memory of man, barren and uncultivated, there could be no *modus* or prescription payments in lieu thereof.

paid,

**Plaintiff
against
PICKERING.**

paid, it was upon private agreement made by the respective rectors, for that such payments varied and differed one from another; and that there could be no custom or prescription, time out of mind, to pay a certain sum for the tithes of the lands in the defendant's occupation, because they had been, within time of memory, waste and unimproved.

The defendants admit that the tithes of corn, grain, and geese, are payable in kind; that the landholders, except of that land called *Aughton Meadow*, should set out the tithe of corn and grain in shocks; but insist, that they are only to set out every *eleventh* shock for the tithes thereof; that the said landholders are to pay at *Midsummer* one goose in seven geese, or 8d. at the election of the rector; that they are to pay at *Easter* 1s. an acre, reckoning eight yards to a perch, in lieu of tithe hay; 8d. an acre, in lieu of the tithes of field potatoes; 1d. for every lamb under four, and 1s. for every fifth lamb; 1d. for every fleece under ten, and 6d. for every tenth fleece, in lieu of tithe wool; 2s. for every breeding sow, in lieu of tithe pigs; 1d. for a milch cow, in lieu of tithe milk; 1d. for a calf; 1d. for flowers and garden stuff;

The defendants admitted, that the plaintiff was entitled to the tithe of corn, grain, and geese in kind; and insisted, that the occupiers of any lands in *Aughton*, except the occupiers of a certain meadow called *Aughton Meadow*, which was exempt from tithes, should, by the custom of the parish, gather and bind the sheafs of all corn and grain, and set up the same in shocks or hattocks, and that in consideration thereof such occupier should only set out every eleventh shock or hattock to the rector for the tithes thereof: AND ALSO, that the said occupiers, except the *Aughton Meadow* aforesaid, should pay to the rector tithe geese at *Midsummer*, or so soon after as the same should be demanded, one goose out of every seven, or eightpence in money in lieu thereof, at the election of the rector: AND ALSO, that the said occupiers, except as aforesaid, should pay yearly at *Easter*, or so soon after as demanded, to the rector, one shilling for every acre, computing at the rate of eight yards to the pole or perch, of the lands in their several occupations, as a *modus*, in lieu of tithes of all hay arising upon such lands, and so after that rate for a less or greater quantity than an acre: AND ALSO, that the said occupiers, except as aforesaid, should pay yearly at *Easter*, or so soon after as demanded, to the rector, eight shillings, for every acre of potatoes, and so after that rate for a less or greater quantity than an acre, growing and being in the said lands, and not in gardens, computing at the rate aforesaid, in lieu of the tithe of potatoes growing in the said lands: AND ALSO at *Easter*, one penny for every lamb yeaned and fed upon their said lands and grounds in the said rectory not exceeding four, and if more than four of such lambs, then the sum of one shilling for every fifth lamb, as a *modus*, and in lieu of the tithe lambs: AND ALSO, at *Easter* one halfpenny for every fleece of wool under ten which they should or might have from sheep fed and depastured upon their said lands, and for every tenth fleece of such wool sixpence, as a *modus* and in lieu of the tithe of wool: AND ALSO, at *Easter*, two shillings for every breeding sow and so many litters of pigs which such sow should or might have or produce in one year, as a *modus* in lieu of tithe pigs: AND ALSO, at *Easter*, one penny for every milch cow, as a *modus* in lieu of tithe milk: AND ALSO, one halfpenny for every calf, in lieu of such calves: AND ALSO, one penny, as *modus* in lieu and satisfaction of the tithe of all roots, herbs, seeds, fruits, flowers and other things arising in their gardens and orchards: AND ALSO

Also one penny for every house; and *Easter offerings* yearly, threepence for a man and his wife and their whole family of whatsoever ages they were; and if no wife, twopence yearly for such *Easter offerings* for the man and the rest of the family; and they stated, that they had severally paid the said *moduses* to *Easter* 1773.

PLUMBE
against
PICKERING.
1d. for a house;
and 3d. if mar-
ried and 2d. if
unmarried for
Easter offerings.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and upon hearing counsel for all parties; and reading the depositions of several witnesses taken in the cause; the presentation of *Thomas Plumbe*, the plaintiff, to the rectory and parish-church of *Aughton*; an institution from *Edmund, Bishop of Chester*, to the plaintiff, instituting him rector of the rectory and parish-church of *Aughton*, dated the twenty-sixth of *December* 1769; a mandate of induction under the seal of the said *Bishop of Chester*, dated the twenty-sixth of *December* 1769, directed to all and singular rectors, vicars, curates, and clerks whomsoever, empowering them jointly and severally to induct, or cause to be inducted, the plaintiff into the said rectory or parish of *Aughton*; a parchment writing, beginning with the words and figures "*Aughton, June 20th, 1716,*" and ending with the words, "*Robert Hindley, rector, Robert Taylor, John Valentine, churchwardens,*" being a copy of an original writing purporting to be a TERRIER of the parish of *Aughton*, pursuant to the instructions at the end of the book of articles returned to the primary visitation of the *Right Reverend Francis, Lord Bishop of Chester*, at *Wigan*, the twentieth of *June* 1716; a book, containing sundry accounts of *John Parkinson*, clerk, of the said parish of *Aughton*; also reading, for the defendants, several depositions of witnesses; a copy of a terrier, entitled a terrier for the parish of *Aughton* for 1696; another, dated the twenty-seventh of *May* 1701; another, the nineteenth of *June* 1705; and some others, returned by the rector and churchwardens thereof; and also reading several receipts;

THE COURT ordered the deputy remembrancer to take an account of what was due for the tithe of potatoes demanded by the bill, with costs respecting the said tithe.

The tithes of po-
tatoes decreed in
kind.

THE COURT also ordered an issue to try the *modus*; and the jury, which was special, found the following verdict: "That
" there was, and from time whereof the memory of man is not
" to the contrary had been, within the parish of *Aughton* and
" the titheable places thereof, an ancient and laudable custom,
" that the occupiers of lands within the said parish (except the
" occupiers of a certain meadow, called *Aughton Meadow*,
" situate in the parish aforesaid), had paid and ought to pay,
" yearly and every year, at *Easter*, or so soon after as the same
" should be demanded, unto and for the use of the rector of the
" said parish of *Aughton* for the time being, one shilling for

An issue order-
ed to try the
modus as to tithe
hav, and a ver-
dict found in
favour of the
modus.

PLUMBE
against
PICKERING.

“ every acre, computing at the rate of eight yards to the pole or
“ perch of such lands in their several occupations, as a *modus*,
“ and in lieu of all tithes of all hay arising in and upon such
“ lands ; and so after that rate for a less or greater quantity
“ than an acre of such lands.”

The bill dismissed
as to tithe
hay, with costs.

The bill therefore, so far as it sought a discovery of and satisfaction for the tithes in kind of hay from the defendants, was, on the third of *December 1778*, dismissed with costs.

MICH. TERM,
18. GEO. 3.

SLOCOMBE against BOND ; et à Contra.

Somersetshire, 20th November 1777.

The rector of
Oake, in *Somersetshire*, claims
the tithes of
the Five Meads,
of hay, milk,
garden stuff,
cyder, apples,
and calves, in
kind.

THE bill stated, that the plaintiff was, in *August 1771*, instituted into the rectory of *Oake*, in the county of *Somerset* ; that he had thereby become entitled to all tithes, both great and small, arising in the parish ; that the parishioners and occupiers of lands therein had been, for thirty years past, under a composition with the last incumbent for all their tithes ; that he had, ever since he had been rector, refused to accept the terms on which the said compositions had been made ; that the defendant had ever since occupied lands in the parish of the yearly value of two hundred pounds, and had had thereon hay, clover, clover feed, trefoil, turnips, feed, wood, furze, rowen or after grass, milch cows, calves, sheep, lambs, wool, sows, pigs, geese, turkeys, apples, pears, plumbs, roots and herbs of all sorts, horses, mares, colts, barren and unprofitable cattle, and other titheable matters of considerable value, the tithes of which were due in kind, but which he had refused to pay. The bill therefore prayed, that he might be decreed to pay the tithes and *Easter* offerings now due, and as they should hereafter become due.

The defendant
says, that the
plaintiff enjoys a
piece of land,
called *the Tith-
ing Acre*, in lieu
of the tithes of
the Five Meads ;

The defendant admitted, that the plaintiff was rector of the parish ; that the greater part of the parishioners and occupiers of lands had, for thirty years past, been under a composition with the last incumbent, and had paid him at the rate of two shillings and sixpence in the pound according to the annual value of their estates for all tithes both great and small, and *moduses* in lieu thereof, that is to say, two shillings in the pound for the great tithes, and sixpence in the pound for the small tithes and *moduses* ; that the plaintiff, since he had been rector, had not accepted of the composition ; and that he had, ever since the plaintiff had been rector, occupied lands in the parish of one hundred and eighty-eight pounds *per annum*, consisting of arable, meadow, pasture, orchard, commonable land inclosed and laid down to pasture and tillage, and furze land ; and he said, that nine acres thereof, heretofore called *Court Meads*, consisting of five pieces, viz. *Gull Mead*, *Chapman's Mead*, *Pair Mead*, *Proad Mead*, and *Moor Mead*, had been immemorially discharged
from

From the payment of tithes ; for that the plaintiff and all his predecessors immemorially held a certain acre of land, called *Tithing Acre*, situate within and surrounded by the nine acres aforesaid, in lieu of all tithes arising out of the said nine acres. He also insisted, that the following *modus*es were payable, at *Easter* yearly, or as soon afterwards as demanded, to the rector, viz. twopence for every cow kept and milked in the said parish, in lieu of tithe of milk ; one penny for every ancient garden, in lieu of the tithes of all garden stuff yearly arising therein ; twopence an acre of meadow and clover grass, in lieu of the tithe of hay ; twopence a hogshead of cyder, in lieu of the tithes of the apples of which it had been made ; one penny for every shilling received for apples grown in the parish and sold ; the left shoulder of every calf calved in the parish, and killed for the use and consumption of its owner, and no part thereof sold, in lieu of the tithe of every calf so fallen and killed : and he set forth an account of his titheable matters, which he said he was ready to pay according to the *modus*es with costs ; and denied, that he knew of any written evidence relative to the said *modus*es, except an ancient terrier in the registry of the church of *Wells*, and also an ancient parish-book wherein they were set down, and authenticated by three successive rectors of the parish.

Stocombe
against
Bond ;
et c. Contra.

and insists on
*modus*es in lieu of
the tithes of hay,
milk, garden
stuff, cyder, ap-
ples, and calves ;

The defendants *J. Bond* and *E. K. Seaman* filed their cross bill, insisting on the said *modus*es.

and files a cross
bill.

The rector denied the several *modus*es.

The rector de-
nies the *modus*es.

The plaintiffs in both causes replied ; the defendants rejoined ; and many witnesses were examined for all parties ; and the causes came on to be heard on the second of *May* 1776, when, upon hearing counsel in both causes, it was ordered, that both the causes should stand over, with liberty to the plaintiffs in *the cross cause* to amend their bill, by making the impropiators of the rectory defendants thereto, on payment of the costs of the day.

The impro-
priator ordered to be
made a defend-
ant to *the cross*
bill.

The *cross bill* was amended accordingly, and the impropiators appeared and answered without oath, pursuant to an order for that purpose ; and then set forth the will of *F. Provide*, dated the tenth of *March* 1777 ; and insisted, that the trust estates in the said will, and particularly the advowson and right of presentation in and to the said rectory, was now vested in them ; and that they were the lawful patrons thereof. They further said, that they were strangers to the several *modus*es suggested by the cross bill ; and denied, that they had ever heard that those or any other *modus*es existed in the parish.

The impro-
priators answer, and
deny the exist-
ence of the *mo-
dus*es.

The causes came on to be further heard on the twentieth of *November* 1777 ; and upon hearing counsel for all parties ; and

Issues directed
to try,

SLOCOMBE
against
BORN;
et c. Contra.

reading the deposition of *Margaret Knight*; and an exhibit marked A; and on debate of the matter; THE COURT ordered issues to try:

Whether ad. an
acre is payable
in lieu of tithe
hay;

FIRST, "Whether there now is, and for time whereof the memory of man is not to the contrary hath been, a certain *modus* or ancient customary payment paid and payable by all and every occupier of meadow lands within the parish of *Oake*, in the county of *Somerset*, at the feast of *Easter* in every year, or so soon after as demanded, to the rector of the said parish for the time being, of twopence for every acre of grafs mowed and made into hay, and so in proportion for a lesser quantity than an acre, for and in lieu of the tithes of such grafs so mowed and made into hay."

ad. for a cow,
in lieu of tithe
milk;

SECONDLY, "Whether there now is, &c. of twopence for every cow or heifer kept and milked by every such occupier within the said parish, for and in lieu of the tithe of milk of every such cow or heifer respectively."

ad. for an an-
cient garden, in
lieu of the tithe
of garden stuff;

THIRDLY, "Whether there now is, &c. of one penny for every ancient garden or gardens of such occupier, for and in lieu of the tithe of all garden stuff yearly arising, growing, and renewing in or upon any such garden or gardens."

ad. for a hog-
head of cyder;

FOURTHLY, "Whether there now is, &c. of twopence for every hoghead of cyder made by every such occupier from apples grown on his said lands within the said parish, and so in proportion for a less quantity of cyder than an hoghead, for and in lieu of the tithes of all such apples so by him made into cyder as aforesaid."

ad. in rs. that
apples sell for;

FIFTHLY, "Whether there now is, &c. of one penny in every shilling of the money for which in every year the apples or pears so grown on his said lands are sold, and so in proportion for a less quantity of apples or pears sold as aforesaid, for and in lieu of the tithes of such apples or pears."

the left shoulder
of every calf kil-
led for the use
of the owner;

SIXTHLY, "Whether there now is, &c. for every owner and occupier of lands in the said parish to pay and deliver to the rector of the said parish for the time being, the left shoulder of every calf fallen on their said respective lands, and killed for the use and consumption of such owner and occupier, and no part thereof sold, for and in lieu of the tithe of every calf so fallen and killed."

Whether the
plaintiff enjoys
the *Tubing Acre*
in lieu of the
tithes of the
Five Meads,
formerly called
the *Cou t Meads*.

SEVENTHLY, "Whether, for time whereof the memory of man is not to the contrary, nine acres of land, parcel of the land in the pleadings of this cause mentioned, heretofore called *Court Meads*, now lying in five pieces, that is to say, *Gully Mead*, consisting of two acres or thereabouts, *Chapman's Mead*

“ *Mead* of three acres, *Pair Mead* of one acre, *Proad Mead* of
 “ two acres, and *Moor Mead* of one acre, or thereabouts, have
 “ been, and still are, freed and discharged from the payment of
 “ all manner of tithes whatsoever from time to time arising,
 “ growing, and renewing, from and out of *the nine acres* of land,
 “ or from and out of any part or parcel thereof, to the rector of
 “ the said parish for the time being, by reason that the rectors
 “ for the time being had and have, during all the said time,
 “ held and enjoyed a certain acre of land, called *Tithing Acre*,
 “ situate within and surrounded by the said nine acres of land
 “ aforesaid, in lieu and full satisfaction of all tithes arising,
 “ growing, and renewing, from and out of the said nine acres
 “ of land.”

Stocombe
 against
 Bond;
 et c. Contra.

The plaintiffs in *the cross bill* to be plaintiffs at law, and the defendants to be defendants; and to be tried by a *special jury*; and the judge to be at liberty to indorse any thing special, &c.

THE COURT further ordered the defendant *Bond* to account with the rector for the tithes of the several other titheable matters and things demanded by the bill.

The tithes of
 the other mat-
 ters decreed.

The cause came on to be heard on the first of *February* 1779, on the return of the *poslea*; and it appeared, that a trial had been had, and that the jurors had found for the plaintiffs at law the first, second, third, fifth, sixth, and seventh issues, as laid in *the cross bill*; and as to the fourth issue they found, “ that there
 “ had been an immemorial custom in the said parish of *Oake*,
 “ that occupiers of ancient orchards within the said parish,
 “ having apples growing thereon, at the feast of *Easter* in every
 “ year, or so soon after as the same have been demanded, have
 “ paid and ought to pay, to the rector of the said parish for the
 “ time being, the sum of twopence for every hoghead of cyder
 “ made by every such occupier from apples grown on such old
 “ orchards, and so in proportion for any less quantity of cyder
 “ than an hoghead, for and in lieu of the tithes of all such
 “ apples so by them made into cyder as aforesaid.”

A verdict found
 in favour of all
 the *moduses*.

THE COURT accordingly ordered the said several *moduses* to be established; *the original bill* as to the nine acres called *Court Meadows* to be dismissed; and *John Bond* to account according to the several *moduses* before mentioned, and also for the *modus* of twopence for every hoghead of cyder made from apples grown in ancient orchards, and for the value of the tithes in kind of apples grown on the lands by him occupied in the said parish not being ancient orchards; the plaintiffs in *the cross cause* to pay the costs of adding the patrons of the rectory as defendants according to the course of the court: costs and further directions reserved till after the report.

The *moduses* es-
 tablished; the
 bill as to the
 tithes of the *Five
 Meadows* dismissed;
 and *Bond* order-
 ed to account
 accordingly.

SLOCOMBE
against
BOND ;
et Contra.

The deputy made his report, dated the fifteenth day of *December* 1785 ; and on the tenth of *February* 1786, the said report was ratified and confirmed, and *J. Bond* ordered to pay to the plaintiff the several sums of nine pounds, one shilling, and ninepence, and seventy-two pounds, nine shillings, and sixpence halfpenny, reported due in respect of the said *moduses* and tithes in kind ; each party to abide by their own costs of the suits in equity ; but *W. Slocombe* to pay the costs at law on the trial of the issues.

SKYNNER, Chief Baron.
EYRE, Baron.
HOTHAM, Baron.
PERRYN, Baron.

MICH. TERM,
18. GEO. 3.

LANGLEY *against* BUXTON.

Derbyshire, 9th December 1777.

The rector of *Fenny Bentley*, in *Derbyshire*, is entitled to the tithes of lambs in kind ; and to 8d. an acre in lieu of tithe hay ; 1d. a cow in lieu of tithe milk ; ½d. a calf in lieu of tithe calves ; and 4d. a foal in lieu of tithe foals.

THE rector of *Fenny Bentley*, in the county of *Derby*, claimed all the tithes, great and small, arising in the parish ; and stated, that the defendant was a parishioner resident, and occupied lands therein, on which he had made grass into hay, and kept sheep, which had produced lambs, and fed barren and unprofitable cattle, milch cows which had calves, and breeding mares which had foals ; that he, the plaintiff, was, for such tithes, entitled to receive one penny a cow, one halfpenny a calf, and fourpence a foal, and for the other matters tithes in kind ; but which the defendant had refused to pay. The bill therefore prayed, that he might account for all the said tithes, except wool, and pay what should appear due.

The defendant admitted, that the plaintiff was rector of the parish ; that he, the defendant, had, since 1767, occupied lands therein ; that he had annually ploughed or mowed or depastured the same ; that he had had lambs and milch cows and brood mares thereon, but no barren cattle, save such as had been bred for the use of the plough or pail ; and insisted, **THAT**, from the time whereof the memory of man is not to the contrary, there had been payable to the rector of *Fenny Bentley*, his lessee or farmer of the tithes thereof, by the several occupiers of the lands now in the occupation of the defendant *E. Buxton* and by the said defendant himself, for such lands within the said parish having hay, cows yielding milk or calves, or foals brought upon such lands within the said parish, the several prescriptive payments following, for and in lieu of tithes in kind hereinafter mentioned, *viz.* the sum of eightpence for and in lieu of the tithes of hay of each day's math or acre of hay grass cut and carried away by every such occupier of the said lands, and so in proportion for any less quantity than a day math

math or acre. **SECONDLY**, The sum of one penny for and in lieu of the tithes of milk of each respective cow. **THIRDLY**, The sum of one halfpenny for every calf brought forth upon the said lands in the said parish, for and in lieu of the tithes of calves. And **FOURTHLY**, The sum of fourpence for every foal belonging to every such occupier of the said lands, and brought forth upon such lands within the said parish.

LANGLEY.
against
BUXTON.

An issue was directed to try the said *modus*; and on the twenty-fourth of *November* 1778, the plaintiff having waived the trial of the issue;

THE COURT ordered the bill, as to tithes in kind of hay, milk, calves, foals, and agistment, to be dismissed with costs; and the deputy remembrancer to take an account of the tithes of hay, milk, calves, and foals, on the footing of the *modus*; and an account of the tithe of lambs, and for *Easter* offerings as demanded by the bill: further directions and costs (except the costs above directed) to be reserved until after the report.

SKYNNER, *Chief Baron*.
EYRE, *Baron*.
HOTHAM, *Baron*.
PERRY, *Baron*.

HARDY *against* KELLAWAY.

HILARY TERM
18. GEO. 3.

Dorsetshire, 27th January 1778.

THE plaintiff, as lessee of *E. Biscoe*, the impropiator of *Portesham*, in the county of *Dorset*, stated, that the defendant had, from the year 1771, occupied *Waddon Farm* and *Riccard's Estate*; that he had fed and depastured thereon milch cows, heifers, sheep, mares, and sows, which had produced calves, lambs, colts, pigs, wool, and milk; that he had also fed and depastured thereon cows, heifers, bullocks, sheep, horses, colts, and other cattle, which were not reared for the pail or plough, and which had not yielded any tithes; that the said cows, bullocks, and sheep had either been sold by him fat to the butchers, or otherwise disposed of, as well as the horses, colts, heifers, and other cattle; that he had also had hens, ducks, geese, turkeys, eggs, gooseberries, potatoes, fruit, garden stuff, and various other titheable things; that he had had wool and lambs from his sheep; that the sheep had been fraudulently removed out of the parish some short time before they were shorn or had lambed; that a great part of the barren cattle so fed had been employed by him in husbandry in other parishes; and that he had refused to pay the tithes that was lawfully due for the said matters and things. The bill therefore prayed an account and payment.

The impropiator of *Portesham*, in *Dorsetshire*, is only entitled to 18 ad. on *Old Michaelmas Day*, for every milch cow depastured on the farms called *Waddon Farm* and *Riccard's Estate*, in lieu of the milk and calves.

HARDY
against
KELLAWAY.

The defendant denied, that the plaintiff was entitled to the tithes of milk, calves, or the agistment of barren beasts in kind. He admitted, that he had, from *Michaelmas* 1771, occupied *Little Wadden Farm* as tenant to *Mr. Groves*, and *Riccard's Farm* as tenant to *Riccards*; and insisted, that he had paid his tithes in kind for pigs, potatoes, wool, and lambs; and he set forth an account of the number of sheep he had depastured in the parish which had not been sheared therein, together with the value of the agistment tithe thereof. He admitted, that he had had several mares, colts, and heifers on his said farms; but said, that the mares had been used in the necessary business of husbandry; that the colts had been reared for the plough, and the heifers for the pail on his farms; and that no tithes were due for the feeding of such mares, colts, or heifers. He admitted, that he had kept some colts for his landlord, and that tithe agistment was due for them: and he insisted on a *modus* of one shilling and twopence for milch cows, in lieu of tithes of milk and calves; of fourpence a barren beast, in lieu for the tithes of agistment of every such barren beast; and that they had been accepted by the plaintiff until the filing his bill: and he set forth the several sums due to the plaintiff on account of the *moduses*, and such tithes as had not been set out; and said, that he had paid to the plaintiff, and for his use, several sums on account of land tax, poors rates, and county rate; and that he was ready to pay the balance of such account. He denied, that he had removed his sheep fraudulently into his other farms.

The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides; and upon hearing counsel on both sides;

THE COURT ordered the bill, as to the tithes in kind of pigs, potatoes, wool shorn, and lambs fallen in *Portesham*, to be dismissed with costs.

THE COURT also directed the following issue to try, "Whether, from the time whereof the memory of man is not to the contrary, the occupier or occupiers for the time being of the farms in the defendant's holding at *Portesham* have paid and been accustomed to pay, and of right ought to pay, at *Old Michaelmas Day* in each year, unto the owner and impropiator of the said rectory and tithes for the time being, or to his farmer or lessee thereof, or to his or their use, the sum of one shilling and twopence, and no more, for every milch cow depastured on the said farms and lands thereto belonging, as a *modus* for and in lieu of and full satisfaction for the tithe of milk and calves of every such cow." The defendant in equity to be
the

the plaintiff at law ; to be tried by a special jury ; and the judge to indorse any special matter.

HARDY
against
KELLAWAY.

THE COURT further ordered the deputy remembrancer to take an account of what was due for agistment of sheep depastured in *Portesbam*, and removed before shearing time ; and the other agistment tithe demanded by the bill ; and also the tithes of geese and turkies ; the deputy, it being admitted that the defendant had paid certain sums to the plaintiff or for his use, to allow the same to the defendant in the nature of a cross demand or set off.

The issue was tried by a special jury, and a verdict found in favour of the *modus*.

THE COURT thereupon, on the eighth of *December* 1778, dismissed the bill as to tithes in kind of milk and calves, with costs both at law and in this court ; and ordered the deputy to take an account thereof, according to the *modus*.

The deputy made his report, dated the twenty-sixth of *June* 1780 ; and on the twenty-seventh of the same month it was ratified and confirmed, except as to the several articles in the first schedule thereto mentioned, amounting to eleven pounds, fourteen shillings, and tenpence, being for the agistment tithes of young beasts bred for the plough and pail, which the Court declared were not liable to the payment of agistment tithe ; and further ordered the defendant to pay one hundred and eight pounds, four shillings, and fivepence, the residue, with costs, except only as to the *modus*.

PLACE against HYDE.

Hampshire, 3d February 1778.

HILARY TERM
18. GEO. 3.

THE vicar of *Sopley*, in the county of *Hants*, claimed the small tithes yearly arising therein, and particularly the tithes of milk and calves, the agistment of barren cattle, and of sheep fraudulently removed before shearing and lambing time, out of the parish, and to avoid paying the tithes of wool and lambs.

The vicar of *Sopley*, in *Hampshire*, is only entitled to 2d. a cow ; 6d. a calf ; 1s. a colt ; 3d. a yearned lamb ; 2d. a garden ; and 1d. for agisting of sheep, in lieu of the tithes thereof.

The defendant admitted, that he had, from *Michaelmas* 1774, occupied a large farm in the parish ; that he had milked a number of cows which had calves ; and that he had agisted several sheep and barren cattle for hire ; but denied that he had fed any sheep which had been shorn, or that had produced lambs, save one, which was delivered to the owner ; or that he had any other matters of which the tithes ought to have been set out, except a few poultry that his dairyman had kept for his own use. He also admitted, that he occupied a farm in the parish of

Ellingham,

PLACE
against
HYDE.

Ellingham, about six miles from *Sopley*; but denied, that he had fed any sheep in *Sopley* which before shearing or lambing time he removed to *Ellingham* to deprive the plaintiff of his tithe, such removal being made only for pasture, and to consume the turnips growing on each farm as the same became ripe and fit for being fed off: and he insisted, that for time beyond the memory of man the several *modus*es or customary payments were of right due and payable to the vicar of the said parish for the time being, for and in lieu of the tithes of the several titheable matters and things, that is to say, one penny for the milk of every cow, sixpence for every calf, one shilling for every colt, threepence for every lamb yeaned, twopence for every garden, and one penny for the agistment of every sheep; that all the said sums were payable at *Michaelmas* in every year.

The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides; and upon hearing counsel; and reading the defendant's answer, and the depositions of *Joseph Sabben*, the plaintiff declining an issue to try the several *modus*es insisted on by the defendant;

THE COURT ordered the bill, as to tithes in kind of milk, calves, garden stuff, and wool, to be dismissed with costs, and the deputy to take an account of what was due for the said *modus*es and the tithe of lambs and of agistment; the last-mentioned accounts to be taken without costs.

HILARY TERM
18. GEO. 3.

WHITE against FRIEND.

Kent, 6th February 1778.

The rector of *Little Mongham*, in *Kent*, is entitled to the great tithes of those lands in the parish which were granted by *Henry the Eighth*, to the *Archbishop of Canterbury*, and which were before parcel of the possessions of the monastery of *Saint Austin*, in *kind*.

THE rector of *Little Mongham*, in the county of *Kent*, claimed all tithes and oblations arising therein.

The defendant *Wyburn* said, that he had regularly every year set out his tithes, and that they had as regularly been carried away by the defendant *Friend*, but by what right he claimed the same he knew not.

The defendant *Friend* said, that during the year 1773 he occupied lands in the parish as tenant to *Sir N. Daeth, Bart.*; that *Sir N. Daeth* held the said lands, with divers other lands and premises in the said parish, by lease dated the twenty-first of June 1771, from the *Archbishop of Canterbury* to his father; that all the said premises were formerly part of the possessions of the monastery of *Saint Austin*, in or near the city of *Canterbury*, one of the greater monasteries; that the said lands, on the dissolution thereof, were seized into the hands of *Henry the Eighth*, and were afterwards by him granted to *Thomas*, then *Archbishop of Canterbury*, and his successors; that they were held by the monastery, before the dissolution thereof, freed and

exempted

WHITE
against
FRIEND.

exempted from the payment of tithes ; that by 31. *Hen.* 8. c. 13. the said lands were discharged from the payment of tithes as freely, and in as large and ample manner as the said monastery had held and enjoyed the same ; and that he had good right, power, and authority to hold and enjoy the same, in like manner, exempt and free from payment of tithes to the plaintiff or any other person whomsoever. He admitted, that he had taken all the tithes which had accrued in the said year for the said lands in the occupation of the defendant *Wyburn*, which, he contended he was well entitled to do, they having been for many years past received by *Sir N. Daeth* or his ancestors : and he insisted, that if the plaintiff sought a satisfaction for the said tithes, *Sir N. Daeth* ought to be a party to this suit.

The plaintiff replied ; the defendants rejoined ; and witnesses were examined on the part of the defendant ; and the cause came on to be heard on the twelfth of *December* 1775 ; and the Court, on the defendant's counsel objecting to the plaintiff's proceeding for want of proper parties, ordered it to stand over. The plaintiff amended his bill, and made *Sir N. Daeth* and the *Archbishop of Canterbury* defendants thereto.

The defendant *Sir N. Daeth* insisted, for the reasons stated in *Friend's* answer, that the lands were exempt and free from the payment of *great tithes* to the plaintiff or to any other person.

The *Archbishop of Canterbury* said, that *Sir N. Daeth* held, by lease dated the twenty-first of *June* 1771, all his parsonage or almery of *Northbourne*, &c. ; that he had caused enquiry to be made, whether the defendant or his lessee had any and what right to the tithes demanded by the bill, or to any portion thereof ; and that it did not appear that he had any right to the said tithes, unless it had been suggested that the premises comprised in the said lease were formerly part of the possessions of the monastery of *Saint Austin* ; and states the same as in the answer of the defendant *Friend*, and which lands were freed and discharged from the payment of tithes as aforesaid, or unless the tithes of the lands are a portion of tithes lying within the rectory of *Little Mongham*, and belonging to the parsonage or almery of *Northbourne*, or are comprised within the description of the lands in the said lease.

The plaintiff replied to *Sir N. Daeth*, who rejoined, but no more witnesses were examined by any of the said parties ; and upon hearing counsel for all parties ; and reading the deposition of *Vincent Lade*, the only witness examined ; the minister's accounts, viz. of *John Fletcher*, from the twenty-eighth to the twenty-ninth year of the reign of *Henry the Eighth* of the monastery of *Saint Austin*, near *Canterbury* ; and the recital therein of a lease dated the twenty-third of *September*, in the twenty-eighth year of *Henry the Eighth* ; a grant from *Henry the Eighth*
to

WHITE
against
FRIEND.

to the then *Archbishop of Canterbury*, dated the twenty-eighth of *April*, in the thirty-second year of his reign; the lease granted by the *Archbishop of Canterbury* to the defendant *Daeth's* father, dated the twenty-first of *June* 1771; and the counterpart from him to the defendant *Friend*; an order to prove exhibits *viva voce*, viz. an indenture dated the eighth of *May*, in the thirty-sixth year of *Queen Elizabeth*, between the then *Archbishop of Canterbury* and *John Smith*; the parliamentary survey of the *Archbishop of Canterbury*, made the thirtieth of *April* 1647; the following leases from the *Archbishop of Canterbury*, viz. of the seventh of *March*, in the thirtieth year of *Charles the Second*, to *John Ellis*; of the seventeenth of *June*, in the first year of *George the First*, to *Thomas Daeth* and *Elizabeth* his wife; of the sixth of *February*, in the twentieth year of *Charles the Second*, to *T. Diconson*; and on full debate of the matter;

THE COURT ordered the bill, as against *J. Wybourn*, to be dismissed without costs, and *J. Friend* to account for all the great tithes which had arisen on the lands in his occupation in the parish of *Little Mongham* in the year 1773; and likewise for the great tithes by him received from *J. Wybourn* during the said year, but without costs. None of the parties in this cause to have any costs of suit, &c.

SKYNNER, *Chief Baron*.
EYRE, *Baron*.
HOTHAM, *Baron*.
PERRY, *Baron*.

HILARY TERM
18. GEO. 3.

DINSDALE against NEWSOM.

Suffolk, 25th February 1778.

The rector of *Stratford Saint Andrew*, in *Suffolk*, claims the tithe of turnips, clover, calves, lambs, milk, goat cows, colts, poultry, or chards, meadow lands, and firewood, in kind.

THE rector of *Stratford Saint Andrew*, in the county of *Suffolk*, claimed both great and small tithes arising therein in kind, and particularly the tithes of hay, clover, turnips, barren and unprofitable cattle, milch cows, calves, milk, underwood, lambs, wool, fruits of gardens and orchards, and other titheable matters, from *Michaelmas Day* 1774 to *Michaelmas Day* 1775.

The defendant says, that the tithes of corn, hemp, pigs, and geese, are payable in kind, viz.

The defendant said, that the tithes of the said parish had been immemorially paid and satisfied to the rector thereof in the following manner: FIRST, The tithes of corn, hemp, pigs, and geese in kind. SECONDLY, That when any person had only seven, eight, or nine calves or lambs, one calf or lamb should

one calf or lamb in seven, eight, or nine, the rector paying $\frac{1}{2}$ d. when nine; 1d. when eight; and $\frac{1}{2}$ d. when seven; and receiving $\frac{1}{2}$ d. for all under seven;

be

be paid to the rector for the tithe thereof, such person being allowed by the rector when the ninth was paid, one halfpenny; and when the eighth was paid, one penny; and when the seventh was paid, three halfpence; and that if the number of calves or lambs should be under seven, then the parson had one halfpenny, and no more. **THIRDLY**, For the milk of every milch cow, twopence halfpenny a-year. **FOURTHLY**, For every gait cow, twopence in each year, in lieu of tithes in kind of such cow. **FIFTHLY**, For the agistment or feed of every bullock, three halfpence, in lieu of tithes of such bullock. **SIXTHLY**, For every colt fallen within the said parish, one penny, in lieu of the tithe of colts. **SEVENTHLY**, For each hen kept in the said parish, one egg in each year, in lieu of the tithes of eggs and chickens. **EIGHTHLY**, Fourpence a-year by the occupiers of every orchard within the said parish, to the parson, in lieu of all tithes arising from such orchard. **NINTHLY**, That the occupiers of all the meadow and clover lands in the parish used to pay the parson thereof each year fourpence for every acre of the said land, in lieu of the tithes of such meadows and clover lands. **TENTHLY**, Sixpence for a hearth hen, in lieu of the tithes of all wood felled or cut within the said parish for firewood or fuel. He further said, that the said *modus*, or the greater part thereof, were taken notice of in an ancient terrier of the rectory and glebe lands of the said parish, made the thirtieth of June 1735, at the visitation of *William*, then *Lord Archbishop of Canterbury*, by the advice and assistance of the rector, churchwardens, and other inhabitants of the parish, then remaining of record in the court of the *Bishop of Norwich*; on the back of which terrier were indorsed these words: "A note of the manner of
 " paying tithes within the said town of *Stratford* as had been
 " used and accustomed since most of the ancient inhabitants
 " there can remember, and is as follows, TO WIT, " In kind,
 " first, they have used to pay in kind the tenth of all corn of
 " the tenth sheaf, and of hemp by the tenth glean; of pigs and
 " geese they pay the tenth; of calves and lambs they pay the
 " tenth, and if they have seven, eight, or nine, he payeth one,
 " being allowed back by the parson when the ninth is paid one
 " halfpenny, when the eighth is paid one penny, and when the
 " seventh is paid three halfpence; and if the number of calves
 " and lambs be under seven, the minister to have one halfpenny,
 " and no more, by custom; for the lactage of every milch cow
 " above or under seven, twopence halfpenny; for a gait cow,
 " twopence; for the feeding of a bullock, three halfpence;
 " for the fall of a colt, one penny; for every hen, one egg;
 " for every orchard, fourpence; for an acre of meadow land,
 " fourpence; for every household paid an hearth hen, in respect
 " whereof they pay no tithe wood;" that in a subsequent terrier made in 1747, and remaining in the said bishop's court, of the rectory, glebe lands, and tithes of the said parish, and signed
 by

DINSDALE

against
NEWSON.and the *modus* of

2½d. a milch cow;

2d. a gait cow;

1½d. a bullock;

1d. a colt;

one egg for every hen;

4d. an orchard;

4d. an acre for meadow and clover lands;

6d. for firewood;

that the said *modus* are set forth in two several terriers;

DIMDALE
against
NEWSOM.

that it was customary in the parish to pay 2s. for every 20s. which turnips in the ground sold for ;
that no tithes are due for turnips eaten by his own cattle ;
that he had tendered sums due according to the said *modus*.

by the rector, churchwardens, and chief inhabitants of the said parish, the like payments and manner of paying tithes within the said parish is also indorsed thereon. He further said, that he had set out the tithes of his wheat and turnips, except of such turnips as had been sold whilst in the ground, for the tithes of which he had offered to pay the plaintiff one pound, five shillings, that being after the rate of two shillings for every twenty shillings which such turnips had sold for, it being usual to pay the rector after that rate for turnips sold, and which had always been accepted, except in this instance : and he insisted, that when his crops of turnips were eaten and consumed upon his farm by his own cattle, that no tithe was due to the plaintiff for and in respect thereof ; and that he had offered to pay the tithes for turnips, clover, hay, milk, hens, eggs, chickens, apples, and pears, according to the *modus* and customary payments to *Michaelmas Day* 1775, but which the plaintiff had refused to accept.

The plaintiff replied ; the defendant rejoined ; and witnesses were examined on both sides ; and on reading the several proofs ; and on full debate of the matter ;

The *modus* as to turnips, clover, calves, and lambs decreed.

THE COURT ordered an account to be taken of what was due for the tithes in kind of turnips, clover, calves, and lambs, according to the several customs alledged in the answer, and admitted on the hearing by the plaintiff's counsel to be payable in lieu thereof.

Issues ordered to try, whether

THE COURT further ordered a trial at law on the following issues :

1st. is payable for every milch cow, in lieu of tithe milk ;

FIRST, " Whether there is, and from time whereof the memory of man is not to the contrary hath been, paid or payable to the plaintiff, as rector of the parish of *Stratford Saint Andrew*, in the county of *Suffolk*, or to the rector or parson of the said parish for the time being, by all the occupiers of lands within the said parish, the sum of twopence halfpenny for each milch cow, yearly and every year, for and in lieu and satisfaction of the tithes of the milk of every such milch cow kept, fed, or depastured, within the said parish."

2^d. for a gait cow, in lieu of tithe of such cow ;

SECONDLY, " Whether there is, and from time whereof the memory of man is not to the contrary hath been, paid or payable to the plaintiff, as rector of the said parish, or to the rector or parson thereof for the time being, by all the occupiers of lands within the same, the sum of twopence for each gait cow, yearly and every year, for and in lieu of the tithes of every such gait cow kept, fed, or depastured, within the said parish."

THIRDLY,

IR

THIRDLY, "Whether there is, and from time whereof the memory of man, &c. by all the occupiers of lands within the same, the sum of one penny for each colt dropped and fallen yearly and every year, for and in lieu of the tithes of all such colts dropt or fallen within the said parish."

DINSDALE
against
NEWSON.

1d. for a colt ;

FOURTHLY, "Whether there is, &c. by all the occupiers of lands within the said parish, one egg for each hen, or the value thereof, yearly and every year, for and in lieu of the tithes of all eggs or chickens hatched or laid within the said parish."

one egg for every
hen ;

FIFTHLY, "Whether, &c. &c. fourpence for the fruit of every orchard yearly, &c. for and in lieu of the tithes of all fruit of orchards within the same."

4d. for fruit ;

SIXTHLY, "Whether, &c. fourpence for every acre of meadow land yearly and every year, by all the occupiers of land within the same, for and in lieu of the tithes of all such meadow lands within the said parish."

4d. an acre for
meadow land ;

SEVENTHLY, "Whether, &c. sixpence as a hearth hen yearly by every householder within the same, for and in lieu of the tithes of all wood felled or cut within the said parish for fire-wood or fuel."

6d. for fire-
wood.

The like issues were directed in the cause of *Dinsdale v. Garrod* ; and that the said *S. Newson* and *J. Garrod* be plaintiffs, and the said *G. Dinsdale*, clerk, the defendant.

The like issues
directed in the
case of *Dinsdale
v. Garrod*.

The issues were tried by a special jury at the summer assizes in 1779, when a verdict was found in favour of the said *modus* upon all the issues ; but on the eighth of December 1779, a new trial was granted on the sixth issue in the case of *Dinsdale v. Newson* only, the said *J. Garrod* having died ; and on the new trial, the jury found a verdict in like manner in favour of the *modus*.

A verdict in
favour of the
modus.

The deputy remembrancer made his report, dated the nineteenth of May 1781 ; and on the twenty-fifth of June 1781, the cause came on for further directions ; when

The deputy re-
ports.

THE COURT ordered the report to be confirmed, and the defendant *Newson* to pay three pounds, one shilling, and fourpence halfpenny reported due, with costs, so far as the same related to the tithes of clover and turnips therein mentioned ; and the bill to be dismissed without costs as to tithe calves in kind and all others matters therein mentioned, with costs at law and in this court.

The report con-
firmed.

BALDWIN

EASTER TERM,
18. GEO. 3.

BALDWIN *against* ATKINSON.

Lancashire, 11th May 1778.

The rector of *Aldingham*, in *Lancashire*, claims the tithe of calves, potatoes, vetches, turnips, and the agistment of barren and unprofitable cattle in the township of *Leece* in kind; a *modus* of 8s. a year in lieu of the tithe hay of the *Leece Meadows*; a *modus* of 2d. for every cow that has calves during a year preceding *Easter*, in lieu of tithe milk only; and 1d. for every cow that has not so calved, in lieu of tithe milk only.

THE rectory of *Aldingham*, in the county of *Lancaster*, claims the tithes in kind of calves, potatoes, vetches, turnips, agistment of barren cattle, and hay made as well upon copyhold as upon freehold lands within the township of *Leece*, except the tithe hay of certain ancient meadow grounds, containing forty-eight acres (of the customary measure there used, six yards and a half to the perch), commonly called *Leece Meadows* or *Leece Meadow Grounds*, for which he claimed a prescriptive payment of eight shillings a-year; and stated, that the greater part of the lands in the said township were copyhold; that only *Cow Park* and *Rough Park* were freehold; that the said yearly sum of eight shillings was a customary or prescriptive payment for the tithe of hay mown from off *Leece Meadow* only, and not from off any other of the copyhold lands within the said township; that the tithe of hay of the meadow ground for which the said eight shillings yearly were payable by the several owners of the said forty-eight acres of copyhold meadow grounds, had been collected by an officer, called *the pail looker*, appointed yearly at THE COURT LEET for that purpose, after the rate of twopence an acre for every acre of the said forty-eight acres, according to a memorandum made for that purpose by the directions of some of the owners, and had been usually paid by the said officer yearly to the rector; that the said *Leece Meadow Grounds* were certain distinct quantities of low flat ancient meadow grounds which had never been ploughed, and from which, if the same or any part thereof had been ploughed or planted, or made to produce any thing titheable other than hay, the tithes would have been due to the rector notwithstanding the said *modus* of eight shillings yearly. The plaintiff denied the existence of the pretended *modus* of twopence for every cow having a calf; and insisted, that the said sum of twopence had been paid at *Easter* for every cow having a calf, or which had calved within a year preceding the said feast of *Easter*; that it was in lieu of the tithe of the milk only, and not for the calf of the said cow; that when a cow which had calved in any other parish within the preceding year had been, whether with or without a calf, bought or brought into, and kept, fed, or depastured in the said township, the said *modus* of twopence had been paid at *Easter* to the rector, although he could not be entitled to any tithe or *modus* in respect of her calf, she having calved in another parish; that where a cow calved within the township, and was soon afterwards, together with her calf, sold or carried out of the township, or when the cow alone was sold or carried out and her calf kept within the township, the said

modus

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against
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modus never had been, in either of the said cases, paid, nor had any other *modus* or prescriptive sum been usually paid for the tithe of milk or calf of such last-mentioned cow at the *Easter* then next following. The plaintiff further charged, that there was another *modus* of one penny payable to the said rector, at *Easter* yearly, for every milk cow kept, fed, or depastured in the said township, which had not calved within a year next preceding the said time of payment thereof, for and in lieu of the tithe milk of such last-mentioned cow there, commonly called *a strip*, by reason of the less quantity of milk given by a milched cow of the last-mentioned sort than was given from a cow which had calved within a year preceding the said time of payment. He further charged, that he had only received the said customary payment of eight shillings yearly until 1774, for and in lieu only of the tithe of the hay mown before that time from off the said forty-eight acres called *Leece Meadows*; but that he had not at any time since his induction in the year 1760, received from the defendants, or any of them, any payment, or other satisfaction whatsoever, for or in respect of all or any of the matters stated in the bill, nor been able to obtain from them any discovery of the amount thereof. The bill therefore prayed a decree of *the single value* of the tithes of hay, calves, vetches, potatoes, turnips, and agistment; the arrears of the prescriptive payment; and to have his right to the said tithes in kind and prescriptive payment established.

The defendants *Atkinson, Case, and Gardner*, admitted, that the plaintiff was entitled to the tithes in kind of all the hay mowed from off *the Freehold Lands*, and to a prescriptive payment of eight shillings a-year in lieu of the tithes in kind of all hay mowed from off *the Copyhold Lands* in the said township.

The defendant *Atkinson* said, that he had, from *January 1768*, occupied a copyhold farm, and some freehold lands in *Leece* called *Rough Park*, and certain grasses or pasturage in *Cow Park*; that the said parks, except five acres thereof, were all the freehold lands in the township; that the rest were copyhold lands; that the copyhold lands in his occupation laid so dispersed that he could not ascertain the same; that *Rough Park* had been mowed every year; that the after-grass thereof had been depastured by the cattle of such persons as had a right to occupy lands therein; that *Cow Park* had not been occupied in severalty, but depastured by such persons as had a right to turn cattle therein, according to the number of grasses or beast gates which each person was entitled to; that he had never sowed or gathered any turnips, save in the *ancient garden* belonging to the copyhold messuage; that he had in general potatoes, except in his gardens, or in the unploughed corners of his fields, the produce of which was consumed in the family;

The defendant *Atkinson* says, he occupies a farm partly freehold and partly copyhold, called *Rough Park*; and a certain right of common in *Cow Park*;

that *Cow Park* was never enjoyed in severalty;

that he had never sowed turnips, or planted

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that he had paid the tithe hay on the freehold lands ;
that 8s. a year were payable in lieu of the tithe hay of the copyhold lands, and had been paid ;
that 2d. was payable for every cow with calf fed on the copyhold lands ;
3d. for every cow without calf ;
1d. for a foal ;
1d. for garden stuff ;
that the said *modus* had been paid to the filing of the bill ;
that the cattle he had depastured were used for plough or pail, except some that he had sold ;
that the horses he had depastured were used in husbandry ;
that no tithes of

planted potatoes yearly in his garden, and occasionally on small spots of land at the corners and edges of his fields where his plough could not go, and on small pieces of copyhold lands ; but that the said turnips and potatoes having been totally consumed in his family, and no part thereof given to his cattle, he could not set forth the quantities he had so had. He said, that he had paid the plaintiff all the tithes of hay which had arisen on the freehold lands ; and that eight shillings a-year, in lieu of the tithe of the copyhold lands, had been duly paid every year, as the same became due ; that no part was in arrear, save what had accrued since the filing of the bill, which he had refused to accept ; and he set up a *modus* of twopence a cow having a calf fed and depastured on the said copyhold lands, in lieu of the tithe milk and calf of such cow ; another *modus* of one penny, at *Easter*, for every milch cow not having a calf, kept, fed, and depastured on the said lands, in lieu of the tithe milk of such cow ; another *modus* of one penny, at *Easter*, for each foal bred in the said lands ; and another *modus* of one penny yearly, at *Easter*, for a garden, in lieu of the tithe of all garden stuff arising within the garden belonging to the copyhold farm ; and averred, that he had yearly paid the plaintiff the said *modus*es as they became due down to the filing of the bill. He further said, that all the cattle he had bred on the said premises were intended, and had been actually used for the pail or plough ; but he admitted, that he had sometimes sold a heifer before it had been milked and a steer before it had been used for the plough ; and insisted, that no tithe of agistment was due for the same. He further said, that he had never kept or depastured any horses on the said premises but what had been used in husbandry, and from which no agistment was due, except one foal, which he had sold on weaning it from the mare ; and that no tithe of calves, foals, potatoes, or turnips, in kind, had ever been demanded by the plaintiff until the summer of 1774.

that no tithes of calves, foals, potatoes, or turnips, had been demanded till 1774 ;

that the titheable cattle had been agisted at 3d. a-head and 1s. a-head.

The defendants *Cass* and *Gardner* spoke to the like purport, and insisted on the aforesaid *modus*es ; and that they had never been called upon to pay agistment tithe ; that their several stocks of cattle, great part of which were not liable to payment of such tithes, had been fed promiscuously together, sometimes in pastures worth one shilling a head *per* week, and at other times in pastures not worth more than threepence a head *per* week ; but they said, that they were willing that the plaintiff's right to agistment tithe should be established.

The defendants *Turner*, *Preslow*, *Bryer*, and *Jackson*, put in the like answers, as occupiers of freehold and copyhold lands within the said township ; and insisting on the said *modus*es, said, that they were willing that the plaintiff's right to agistment tithe as aforesaid should be established.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and upon hearing counsel for all parties; and on reading, on behalf of the plaintiff, *a terrier*, and also several depositions; and for the defendants their answers, and several depositions, receipts, and letters; and on full debate had thereon;

BALDWIN
against
ATKINSON.

The cause
heard.

THE COURT directed a trial at law upon the following issues, to wit,

An issue directed to try,

FIRST, "Whether the immemorial customary or prescriptive payment of eight shillings within the township of *Leece*, in the parish of *Aldingham*, which hath been and ought to be paid yearly at the feast of *Saint Michael the Archangel*, old stile, to the rector of the said parish of *Aldingham* for the time being, hath been and ought to be so paid as a *modus* for and in lieu and full satisfaction of the tithe in kind of the hay mown from off certain ancient copyhold meadow grounds lying within the said township of *Leece*, and computed to contain forty-eight acres, or thereabouts, of the customary measure there used; or whether the said customary or prescriptive payment of eight shillings hath, from time whereof the memory of man is not to the contrary, been and ought to be paid yearly for and in lieu and full satisfaction of the tithe in kind of all the hay mown from off all the copyhold lands and copyhold meadow ground lying in the said township of *Leece*, in the said parish of *Aldingham*."

Whether 8s. a year be payable, on *Old Michaelmas Day*, in lieu of the tithe hay arising on the *Copyhold Lands*.

SECONDLY, "Whether the prescriptive sum of twopence, which, for time immemorial, hath been or ought to have been and ought to be yearly paid, at *Easter*, to the rector of *Aldingham* for the time being, for every cow kept, fed, or depastured on the respective messuages, tenements, and lands of the defendants, or any of them, within the said township of *Leece*, which hath calved within a year next preceding the said time of payment, hath been and ought to be so paid as a *modus* for and in lieu and full satisfaction of the tithe of the milk only of such cow, or as a *modus* for and in lieu and full satisfaction of the tithe both of the milk and of the calf of such cow."

Whether 2d. is payable, at *Easter*, for every cow with a calf fed on the said lands.

The defendants in equity to be the plaintiffs at law; to be tried by a special jury; and the judge to indorse special matter on the *postea*.

THE COURT further ordered the bill, as to all the other matters except the said issues, to be dismissed, but *without prejudice* and without costs.

The bill as to all other matters dismissed *without prejudice*.

The issues were tried, and the jury found,

As to THE FIRST ISSUE, "That the immemorial customary and prescriptive payment of eight shillings within the said township of *Leece*, in the parish of *Aldingham*, which hath been and ought to be paid yearly at the feast of *Saint Michael the Archangel*, old stile, to the rector of the said parish of *Aldingham* for the time being, hath been and ought to be so paid as a *modus* for and in lieu and full satisfaction of the tithe in kind of the hay mown from off certain ancient copyhold meadow grounds lying within the said township of *Leece*, and computed to contain forty-eight acres, or thereabouts, of the customary measure there used; or whether the said customary or prescriptive payment of eight shillings hath, from time whereof the memory of man is not to the contrary, been and ought to be paid yearly for and in lieu and full satisfaction of the tithe in kind of all the hay mown from off all the copyhold lands and copyhold meadow ground lying in the said township of *Leece*, in the said parish of *Aldingham*."

The jury find, that the 8s. a year are payable the township.

BALDWIN
against
ATKINSON.

“ township of *Leece*, in the parish of *Aldingham*, in the county
“ afore said, hath been and ought to be paid yearly, at the feast
“ of *Saint Michael the Archangel* according to the old stile, to the
“ rector of the said parish of *Aldingham*, in the county afore-
“ said, for the time being, as a *modus* for and in lieu of and in
“ full satisfaction of the tithes in kind of all the hay mowed from
“ off all the copyhold meadow ground lying and being in the
“ said township of *Leece*, in the parish of *Aldingham* afore said,
“ in manner and form as the said plaintiffs within assert.”

and that the ad.
a cow are paya-
ble in lieu of
the tithes of
both milk and
calf.

As to THE SECOND ISSUE, “ That the prescriptive sum of
“ twopence hath, from the time whereof the memory of man
“ is not to the contrary, been paid and ought to be paid, at
“ *Easter*, to the rector of the parish of *Aldingham* afore said
“ for the time being, as a *modus* for and in lieu and full satis-
“ faction of the tithe both of the milk and of the calf of every
“ cow kept, fed, and depastured in and upon the respective
“ messuages, tenements, and lands of the said plaintiffs, or any
“ of them, within the said township of *Leece*, in the parish
“ afore said, which had calved within one year next preceding
“ the said time of payment, in manner and form as the said
“ plaintiffs affirm.”

The bill dismiss-
ed.

THE COURT, on the twenty-first of *February* 1780, ordered
the bill to be dismissed with costs.

EASTER TERM,
18. GEO. 3.

PERKINS against COZENS.

Middlesex, 25th May 1778.

The plaintiff
says, that he is
seised in fee of
the manor of
Teddington, in
Middlesex, and
of the patronage
of *Teddington*
Chapel; that he
gave the chapel
to the defend-
ant, but not all
the fees belong-
ing thereto;
but that the de-
fendant had re-
ceived, and re-
fused to pay him
the said fees.

THE bill stated, that the plaintiff, being seised in fee or of some
other good estate of inheritance, by virtue of a grant from
James the First, of and in the manor of *Teddington*, in the county
of *Middlesex*, and also of the patronage or right of donation of
the donative church or free chapel of *Teddington*, did, by his
instrument of donation dated the sixth of *February* 1761, give
and grant to the defendant the said church or chapel of
Teddington, with all rights, benefits, advantages, and appurte-
nances whatsoever, in as ample manner as the last incumbent had
enjoyed the same, saving and reserving all such rights and immu-
nities as belonged to the plaintiff as patron of the said chapel
or as lord of the said manor, and did thereby nominate, ap-
point, and induct the defendant, to the corporal possession of the
same, with all its said rights and appurtenances; that during the
time the defendant's predecessor had held the said donative,
the several fees were payable to and received by the plaintiff's
brother and the plaintiff, as lords of the said manor and patrons
of the said donative, viz. for a vault or monument in the church
or church-yard, ten pounds, ten shillings; for a stone laid flat
on a grave, five pounds, five shillings; for a forehead or tail
stone,

stone, one pound, one shilling; that his said predecessor never received or pretended to be entitled to receive the same, or any part thereof; that he, the plaintiff, and all those whose estate he had, had, time out of mind, been entitled to and had received the said fees for erecting, digging, and laying such vaults or monuments and stones in the church and church-yard by virtue of the said grant; that in consideration thereof, and of the other rights of the plaintiff and those under whom he claimed, of and in the said manor and donative church or chapel, eight pounds, six shillings, were payable to THE CROWN, six pounds, four shillings, to the chaplain, and four shillings for bread and wine for the sacrament; and that he had paid the same accordingly; that the defendant claimed to be entitled to the said fees, or to some sums of money for digging, erecting, or laying such vaults, monuments, or stones; that in order to establish such title, he had refused to permit divers persons to dig, erect, or lay such vaults, monuments, tombs, or stones, and likewise had written to divers persons who intended to dig, &c. such vaults, &c. to deter them from doing the same; that he, the plaintiff, had not given him any permission so to do; and that he had received of several persons certain fees, as above stated. The bill therefore prayed, that the defendant might account for the sums he had so received for erecting, setting up, and laying down such monuments, vaults, and stones, in the said church and church-yard; and that he might be restrained from receiving the same for the future.

PERKINS
against
COZENS.

The defendant admitted, that the plaintiff was seised of, or entitled to, some estate in the manor of *Teddington*; but denied that it was, to his knowledge, under the grant, or that he was entitled to the patronage or right of donation to the donative church or free chapel aforesaid; and said, that he believed the plaintiff had an alternate right to the said patronage or right of donation to the same with the heir at law of *Sir O. Bridgman*, deceased. He admitted, that the plaintiff had given him the said church or chapel; and insisted, that as, by virtue thereof, he had become the minister and incumbent thereof, he was, as such, entitled to all rights, fees, benefits, advantages, and appurtenances whatsoever, in as ample a manner as his predecessors had enjoyed the same; and that the plaintiff had no remedy for such fees in a court of equity; but that his right, if he had any, was cognizable at the common law. He set forth an account of all fees which he claimed title to for erecting, setting up, laying down, or digging, or for permission to set up, erect, lay down, or dig any vaults, monuments, stones, or wood, in the church or church-yard; and insisted, that he then was, and his predecessors had been, entitled to the said fees.

The defendant insists, that as he was legally appointed minister of the said chapel, he is entitled to all the fees appertaining to it; and that the plaintiff's remedy, if he has any right, is at law, and not in equity.

The plaintiff replied; the defendant rejoined; and many witnesses were examined on both sides; and upon hearing counsel on both sides;

The cause heard.

PERKINS

against

COZENS.

The bill retained,
for a year.

THE COURT ordered the bill to be retained for a year, with liberty for the plaintiff to bring his action at common law to recover the said fees.

TRIN. TERM,
18. GEO. 3.

BENNETT against ALLENBY.

Lincolnshire, 30th June 1778.

The impropriators of the rectory of Sutton, consisting of the townships of Sutton St. Mary, Sutton St. Nicholas, Sutton St. James, and Sutton St. Edmunds, in Lincolnshire, claims the tithes of corn, grain, hay, turnips, milch cows, calves, foals, sheep agisted between shearing and shearing day; and the depasturing of barren cattle, in kind, for the years 1775 and 1776.

See other causes
Easter Term,
23. Geo 3.

THE bill stated, that the parish of Sutton, in the county of Lincoln, was very extensive, and contained upwards of twenty thousand acres, including commons; that it was divided into the four hamlets or villages of Sutton Saint Mary, in which the mother-church stood, Sutton Saint Nicholas, Sutton Saint James, and Sutton Saint Edmunds; that in each of the last three hamlets there was, and for a great many years had been a church or chapel for the celebration of divine service for the accommodation of the inhabitants thereof respectively on account of their great distance from the mother-church; that for many years before, until, and at the time of the dissolution of monasteries, the abbot, or prior and convent of the monastery of Saint Mary of Castle Acre, in the county of Norfolk, were seised, to them and their successors, for ever, of the impropriate rectory or Sutton aforesaid, of the glebe lands, tithes, oblations, and offerings thereto belonging; and the right of patronage to the vicarage of Sutton aforesaid; that on the dissolution of the abbey of Castle Acre, the said rectory, glebe lands, tithes, oblations, offerings, and right of patronage, became lawfully vested in Henry the Eighth, who became seised in fee simple, and so remained until the sixth year of James the First, all grants thereof being then determined; that James the First, being so seised, by letters patent dated the said eighth of April, granted to F. Phillips and Richard Miere the said rectory and right of patronage, with all houses, glebe lands, tithes as well great as small, oblations, obventions, and other profits to the same belonging, for ever; that the said premises had, by sundry conveyances, become lawfully vested in W. C. F. Skeffington in fee simple; that he in 1775, by lease and release dated the twenty-third and twenty-fourth of January 1775, conveyed the same, for a valuable consideration, to the plaintiff for ever; and that John Walker, who was in possession of the tithes, assigned them to the plaintiff; that the plaintiff had thereby been entitled to the income of the said premises from Lady Day 1775, and particularly to all the tithes belonging to the rectory (except such as belonged to the vicar), particularly to the tithes of corn, grain, hay, turnips, milk, calves, foals, and agistment of sheep not sheared therein, and other unprofitable cattle, the vicar not being endowed with any of the said tithes. The bill then stated, that the defendants had severally, since Lady Day 1775, occupied lands in the said parish, and had ever since reaped corn, grain,

BENNETT
against
ALLENBY.

grain, hay, turnips, and had milk, calves, and foals thereon; that they had also kept, fed, and depastured on their lands, dry, barren, and unprofitable cattle, and particularly sheep after shearing, which had been taken out of the parish before the next succeeding shearing time, bullocks, barren cows, horses, rearing calves, and foals; that in 1775 and in 1776, or in one of those years, they had kept, fed, and depastured, a great number of sheep, which they had fattened and sent to *London* for sale; that such sheep had been kept on such lands for some time after they had been sheared, but not until the next shearing day; that the agistment tithe thereof was well worth one penny a month; but that although he had given notice, dated the first of *October* 1776, to each of the defendants, to account for the tithes of hay, milk, calves, foals, sheep, and barren cattle they had, on a pretence that no tithes were due, except for corn and grain, refused to pay any such tithes in kind; and he set forth the cause of *Hyde v. Woollaston (a)*; and prayed, that the right to the tithes aforesaid might be established, and that an account might be taken of all the hay, turnips, milk, calves, foals, sheep, and barren cattle, which each of the defendants (except the defendants *Greaves* and the *Governors of Guy's Hospital*) had had in each of the years aforesaid, and severally pay the tithes thereof to the plaintiff.

The defendants (the occupiers) admitted, that the parish of *Sutton* was large and extensive; that it contained twenty-five thousand acres of land, including waste lands; that it was divided into four hamlets, as stated in the bill; that the rectory, the glebe lands, tithes, oblations, offerings, and right of patronage to the vicarage, were vested in the prior and convent of *Saint Mary of Castle Acre* and their successors for ever; that the said monastery was, while it was so vested, dissolved in the thirty-

The defendants admit, that the plaintiff is seised of the rectory as stated in the bill;

(a) The case of *Hyde v. Woollaston* came before the court of exchequer on the sixteenth of July 1723. The plaintiff, as impropriatrix of the rectory of *Sutton*, otherwise called *Sutton St. Mary*, claimed the tithes of *Sutton Marshes*, a tract of land watered by the sea, and containing more than three thousand acres. The defendant admitted, that the plaintiff was seised in fee of the rectory; and that he, the defendant, had occupied *Sutton Salt Marsh* from *Lady Day* 1719 to *Lady Day* 1721; and pleaded, with a *protestando*, that *James the First* had seised the said marshes as direct lands; that they became vested in him *jure corona*; that *Charles the First* granted them to the *Duke of Lenox*; that he, the defendant, had become seised thereof under the said grant; and that, as they had been so seised as direct lands, they were *extraparoehial*,

and no tithes could be due for them to the parish of *Sutton*. But the defendant withdrew this plea; and upon exceptions being filed to the answer, he put in a further answer, by which, after reciting the seisin of the said lands, as direct, into the hands of the crown, he said, that *Charles the First*, on the fifteenth of *May*, in the fifteenth year of his reign, granted the same, and all the tithes thereto belonging, to the *Duke of Lenox*; and that the lands he, the defendant, held in the said marshes had become vested in him by divers mesne conveyances under the said grant. But the COURT ordered the defendant to account for the tithes demanded by the bill; and on the fourth of July 1724, the deputy remembrancer's report of what was due on such account was ratified and confirmed, with costs.

BENNETT
against
ALLENBY.

and that he is
entitled to the
tithes of corn
and grain, ex-
cept in *Cockle
Riggs*;

and they insist
on a *modus* of
2d. an acre in
lieu of tithe
hay;

that their tur-
nips were eaten
by sheep that
had paid tithes
of wool and
lambs, and
therefore were
not titheable;
or if so, that it
was due to the
vicar;

that in *Sutton St.
Mary* the vicar
received butter
in lieu of tithe
milk,

and also in *Sut-
ton St. James*
and *Sutton St.
Edmond*;

and also in *Sut-
ton St. Nicholas*;

and had com-
muted the said
tithes for mo-
ney;

that nine cheeses
were payable to
the impropriator
for the tithe of all
milk made into
cheese in the
said three town-
ships;

first year of *Henry the Eighth*, and the possessions thereof vested in *Henry the Eighth* in fee simple; that *W. C. F. Skeffington* became seised in fee of the said rectory and advowson some time before 1775; that the said premises were duly conveyed to the plaintiff; that the said plaintiff was thereby entitled to the tithes of corn and grain arising in the said rectory; that such title had never been disputed; that, on the contrary, all tithes of corn and grain had been paid to him, except those tithes of corn and grain which the vicar had, for many years past, received in *Cockle Riggs*; but they denied, that he, the plaintiff, was entitled to tithe in kind of hay; and insisted on a *modus* of two-pence an acre in lieu thereof. They further said, that the cultivation of turnips had been but lately introduced into the parish; that the quantity grown was very small; that they had usually, if not always, been eaten by sheep that were afterwards shorn in the parish, and that paid therein the tithes of wool and lambs; and that, under such circumstances, no tithe was payable for the same; but that if it were due, the defendant *Graves* claimed the same as vicar; but under what right they could not set forth. They further denied, that the plaintiff was entitled to the tithes in kind of milk; and insisted, that there were payable to the vicar, for every milch cow kept in the hamlet of *Sutton Saint Mary*, four pounds of butter, and for every strap milch cow and heifer of the first calf two pounds of butter, as *moduses*, in lieu of all tithes of milk of such kine and heifers; AND ALSO, for every milch cow kept in the hamlet of *Sutton Saint James* and *Sutton Saint Edmond*, two pounds of butter, and one pound for every strap milch cow and heifer of the first calf; such butter to be made between *May Day* and *Lammas Day*; AND ALSO, that there were payable to the vicar threepence for every milch cow, and three halfpence for every strap milch cow and heifer of the first calf kept in the hamlet of *Sutton Saint Nicholas*, in full of the tithe of milk of all kind of heifers within the said hamlet; AND ALSO, that the vicars of the parish had, for many years past, accepted of one shilling and fourpence for every milch cow, and eightpence for every strap milch cow and heifer of the first calf in *Sutton Saint Mary*, and eightpence for every milch cow and fourpence for every strap milch cow and heifer of the first calf in *Sutton Saint James* and *Sutton Saint Edmond*, in lieu of all such butter as aforesaid. They further insisted, that there had been paid to the impropriator, by every inhabitant (except of *Sutton Saint Nicholas*), keeping milch kine, the milk of which was made into cheese, nine cheeses made of each kine-keeper's own dairy, the first *Monday* after *Lammas*, or afterwards upon request, as a *modus* due to the impropriator in lieu of tithe milk made into cheese in the said three hamlets; and that the rector had usually accepted of one shilling for every milch cow so kept in the said

three

three hamlets, in lieu of such tithe cheese. They also insisted, that the plaintiff was not entitled to any tithe of milk and cheese in the hamlet of *Sutton Saint Nicholas*, the *modus* of threepence a milch cow and three halfpence a strap milch cow and heifer of the first calf therein having been immemorially paid to the vicar in lieu thereof. They also denied, that the plaintiff was entitled to the tithe in kind of calves; and insisted on a *modus* payable to the impropriator of one halfpenny for every calf calved within the parish under the number of seven belonging to any one person, in lieu of the tithes of such calves; and that if any one person had in one year seven calves, that then a *modus* of one shilling and fourpence halfpenny had been paid in like manner; and if eight calves, then seventeenpence; and if nine calves, the like payment; and if ten, then one shilling and sixpence in like manner, in lieu and discharge of all tithes of such calves; and so on for progressive numbers above ten. They also denied, that the plaintiff was entitled to tithe in kind of foals foaled in the parish; and insisted, that a *modus* of one penny for every foal foaled therein, in lieu thereof, had been paid to the rector. He also denied, that the plaintiff was entitled to the tithe in kind for the agistment of sheep kept, fed, and depastured in the parish after shearing time, and sold out before the next succeeding shearing time. They also denied, that he was entitled to the tithes of the agistment of bullocks, barren cows, horses, rearing calves, or foals, or any other dry, barren, or unprofitable cattle, or to any *modus* in lieu thereof, unless it were from persons dwelling out of the parish, and occupying lands therein; and insisted, that the vicar was entitled to such tithes according to a *modus*, in lieu of agistment tithes; for that by articles of agreement, dated the third of June 1608, between *Francis Morrice*, the then impropriator, under whom the plaintiff derived his title, and *T. Clark*, the then vicar of *Sutton*, the said *T. Clark*, for himself and successors, covenanted, that he, *Francis Morrice* and his heirs, &c. should, at all times thereafter, receive the herbage payable for such barren and fat cattle fed within the said parish by foreigners or strangers, and the benefit and profit arising therefrom, as the same should grow due; and that the said *F. Morrice*, in consideration thereof, covenanted with *T. Clark* and his successors to pay the yearly sum of forty shillings at *Easter*, and permit the said *T. Clark*, &c. to receive all the tithes of corn and grain then growing upon the three riggs called *Cockle Riggs*; that the impropriator had since received the tithe of herbage or agistment of cattle depastured in the parish, by persons dwelling out of the parish, but occupying lands therein, who were commonly called *out-dwellers* or *out-owners*; and the vicar the forty shillings and the tithe of corn and grain upon *Cockle Riggs* aforesaid until the year 1741, when *F. Williams*, the then vicar, filed his bill in chancery against *Sir T. Peyton, Baronet*,

BENNETT
against
ALLENBY.

that he was not entitled to any tithe for the milk, made into cheese in the townships of *Sutton St. Nicholas*;

that there is a *modus* of $\frac{1}{2}$ d. a calf under seven; 1s. $4\frac{1}{2}$ d. for seven; 17d. for eight and nine; and 1s. 6d. for ten;

another *modus* of 1d. for a foal;

that no tithes are payable for sheep between shearing day and shearing day;

but that if so, such tithes are due to the vicar;

for that by an agreement made in the year 1608, the vicar, in consideration of 40s. a-year and the corn tithes of *Cockle Riggs*, transferred the agistment tithes due from out-dwellers to the impropriator;

that the said agreement was afterwards confirmed;

BENNETT
against
ALLENBY.
and that the
plaintiff being
only *quasi* tenant
at will of such
agistment tithes
cannot have
them established,
especially against

Baronet, and *Dame Bridget*, the impropiators, which ended in an amicable agreement, dated the fifteenth of *March* 1743, by which the said articles of the third of *June* 1608 were confirmed; and that the plaintiff, being only in the nature of a tenant at will of such tithes to the vicar, was not entitled to have any decree for establishing the same, especially as the defendants were all inhabitants, and consequently not liable to pay the plaintiff for such tithes.

persons not liable to pay them.

The defendants
Allenby and o-
thers offer the
modus for hay,
cheese, calves,
and foals.

The defendants *Allenby*, *Cropley*, *Reed*, and *Skynner*, offered to pay the plaintiff the twopence an acre for grass land mowed, the nine cheeses after the rate of one shilling a milch cow, the one halfpenny for each calf, and the one penny for each foal.

The defendant
Wrought offers
to pay the said
modus, except
that for cheese,
he being resi-
dent in the
township of
Sutton St. Ni-
colas.

The defendant *Wrought* offered to pay the plaintiff such *modus* as were due to him; and insisted, that he had already paid his agent all the tithes that had been demanded of him for 1775. He also insisted, that he had, amongst other things, paid him the *modus* of twopence an acre for grass land mowed, and, by mistake, six shillings in lieu of the *modus* of nine cheeses, which was after the rate of one shilling a milch cow, he not being liable to pay the same as being an inhabitant of *Sutton Saint Nicholas*; and also one shilling and sixpence, the *modus* for ten calves; and ninepence for nine foals for the year 1775; and had offered to pay the same for 1776; but that the plaintiff's agent had refused to accept it.

The defendant
Goodhall says, he
tendered in full
in 1776.

The defendant *C. Goodhall* and several others made the same offer to pay as *Wrought* had done; and said, that they had paid the plaintiff's agent the said *modus* for 1775, and had offered to pay him the same for 1776 after the rates before-mentioned.

The defendant
Parkinson says,
he had no milk
cows.

The defendant *Parkinson* said, that he kept no milch cows in 1776 in any part of the parish, except in *Sutton*, in which no tithe of milk or cheese was due to the rector.

The defendant
Mills says, his
turnips were
eaten on the
land.

The defendant *Richard Mills* said, that he had refused to pay the tithe of turnips, because the same had been eaten on the land by his sheep.

They admit
they had corn
and grain;

All the aforesaid defendants, except *J. Atkin*, admitted, that they had reaped and gathered from the lands in their occupations corn and grain, the tithes in kind whereof they did not dispute the plaintiff's right to.

And

And all the said defendants, except *Rutter, Reed, J. Parkinson*, and *J. Taylor*, admitted, that they had fattened on their lands a number of sheep after they had been sheared, and had sold them before the next shearing day; that they had also had thereon bullocks, heifers, barren cows, and horses, and other dry, barren, and unprofitable cattle; but that as, during such time, they were inhabitants of the said parish, the plaintiff was not entitled to the agistment tithe thereof, or to any composition in lieu thereof, for the reasons aforesaid.

BENNETT
against
ALLENBY,
and that they had depastured sheep between shearing day and shearing day, and had fed other unprofitable cattle; but insisted, that no tithes are payable for the same.

The defendant *J. Taylor* insisted on the several *modus*es to the like effect as the other defendants; and also, that twopence was paid to the vicar, at *Easter*, by every occupier, by the names of *hearth silver, garden silver, and shot and waxing silver*, in lieu of all tithes of herbs, flowers, roots, apples, pears, plumbs, nuts, and other fruit, grown in any gardens or orchards in the parish, and of all woods, cuttings, croppings, and loppings of trees cut, and of herbage and agistment of dry, barren, and unprofitable cattle of such occupier, residing in the parish or out of the said parish; AND ALSO a *modus*, by the *out-owners* of eightpence an acre for every acre of meadow or pasture, in lieu of all tithes of such meadow or pasture land, to the rector.

The defendant *Taylor* insists on a *modus* of 2d. a year, at *Easter*, to the vicar, called *hearth silver, garden silver, and shot and waxing silver*, in lieu of firewood, garden stuff, and agistment; and that 8d. an acre was payable by

out owners, in lieu of the tithes of their meadow and pasture land.

The defendant *Greaves* said, that he was, in the year 1751, presented to the vicarage of *Sutton*, and still was vicar thereof; that the plaintiff was entitled to the tithes of corn and grain, except by agreement from particular lands; and also to the tithes of hay in kind, or some payment in lieu thereof; but that he, as vicar, was entitled to the tithes of turnips, though he had never received the same; and he set forth and insisted on the *modus*es before mentioned respecting the tithes of milk, cheese, calves, and foals; and also, that the plaintiff was not entitled to any tithe whatsoever for the agistment of sheep fed, but not sheared in the parish, or for the agistment of any other unprofitable cattle kept therein, except by agreement from the *out-owners*, during the continuance of such agreement; for that all agistment tithe, except as aforesaid, belonged to him, as vicar, and not to the rector; and that although the said articles of agreement, dated in 1608, was submitted to until the year 1741, they were not binding, and he was at liberty, when he thought fit, to relinquish the said annual sum of forty shillings, and the tithes of corn and grain of *Cockle Riggs*, and to take himself the agistment tithe of persons dwelling out of the said parish, and the customary payments in lieu thereof, but which he had not hitherto done, as he was extremely desirous of preserving amity and peace. He further said, that although

The vicar says, that the plaintiff is entitled to the tithes of corn and grain, except as to *Cockle Riggs*; and to the tithes of hay; but that he, the vicar, is entitled to the tithes of turnips and milk; and also to the tithe agistment of sheep not sheared, and the depasturing of barren cattle; excepting the alteration made in respect to the corn tithes of *Cockle Riggs* and the agistment tithes for *out-dwellers* by the agreement of

1608; that the said agreement was not binding upon him; that the endowment of the vicarage was

the

BENNETT
against
ALLENBY.

but that, by traditional custom, he was entitled to the tenth fleece or tenth pound of wool of any sheep wintered and shorn in the parish; to $\frac{1}{2}$ d. a month, or 3d. a year, for every sheep brought in after *Candlemas*; and, if sheared, to a fleece in every one hundred for every month they had been depastured; and no further tithe, if sold at any time after such shearing and before *Christmas*; that he was entitled to 4lb. of butter for every milch cow, and to 2lb. for every strap in *Sutton St. Mary*; to 2lb. and 2lb. in *Sutton St. James* and *Sutton St. Edmunds*; to 3d. a milch cow and $1\frac{1}{2}$ d. a strap in *Sutton St. Nicholas*; that the impropiator was entitled to nine cheeses, except in *Sutton St. Nicholas*, in lieu of milk made into cheese; that in *Sutton St. James* and *Sutton St. Edmunds* the vicar had taken 1s. 4d. a cow and 8d. a strap, instead of the butter;

the vicarage had been created before the reign of *Richard the First*, the archives, records, and books thereof, which were usually kept in the registry of the *Bishop of Lincoln* antecedent to the year 1642, were destroyed during the commotions occasioned by the civil war, and the ancient endowment of the vicarage, or any augmentation thereof, could not be found, although great search had been made for the same; yet that there had, by ancient custom, been paid to the vicar for sheep the following tithes, viz. if sheep had been wintered within the parish, and sheared there, the tenth fleece, or every tenth pound of wool, as a complete tithe of such sheep; and if sheep had been brought into the said parish after *Candlemas* in every year, and sold out again the same year, without being sheared, one farthing for every month during the time that each of such sheep had been so depastured in the said parish, or threepence for every sheep for a year, which the defendant considered, and he believed ought to be considered as payment, in lieu of the tithe of agistment of such sheep; and in case sheep were brought into the parish after *Candlemas*, and sheared there the same year, after the rate of one fleece in every one hundred for every month such sheep had been depastured within the said parish; but if any sheep had been sheared and had paid the tenth fleece, and after such shearing, and before *Christmas* in the same year, had been sold out of the said parish, no agistment whatever was paid for such sheep, the tenth fleece so rendered being considered as the whole tithe of such sheep for the year. He also insisted, that he, as vicar, was entitled to four pounds of butter for every milch cow; to two pounds of butter for every strap milch cow and heifer of the first calf kept in the hamlet of *Sutton Saint Mary*; and to two pounds of butter for every new milch cow kept in the hamlets of *Sutton Saint James* and *Sutton Saint Edmunds*; to one pound of butter for every strap milch cow and heifer of the first calf, such butter to be paid between *May Day* and *Lammas Day* in every year; and for every milch cow kept in *Sutton Saint Nicholas*, threepence; and for every strap milch cow and heifer of the first calf, three halfpence, in discharge of tithes of milk of all cows kept in the said hamlets. He also insisted, that by another ancient custom there had been rendered and paid to the rector, by every inhabitant keeping kine therein, except in *Sutton Saint Nicholas*, the milk of which was made into cheese, nine cheeses, made of the party's own dairy, in lieu of the tithe of all milk made into cheese. He further said, that such payments of one shilling and fourpence for every milch cow, and eightpence for every strap milch cow and heifer of the first calf in *Sutton Saint James* and *Sutton Saint Edmunds*, had always been accepted by the vicar

in

in lieu of such butter : and he prayed, that if any decree should be made touching the rights of the rector, the right of the vicar would not be affected thereby, but declared and established.

BENNETT
against
ALLENBY.

and prays, that

his rights, as vicar, may be declared and established.

The President and Governors of Guy's Hospital said, that Wrought and four others had occupied lands in the parish before and since Lady Day 1775, as tenants to the hospital, and might have had thereon the several titheable matters stated in the bill ; but they insisted, that no tithes of any kind, except corn and grain, were due *in kind*, either to the rector or to the vicar of the parish ; but that, on the contrary, they were only entitled to the several *modus*es insisted on by the other defendants. They further said, that the case of *Hyde v. Woolleston* was so far from being a determination of the plaintiff's right to the tithe in kind of hay throughout the rectory, and particularly on the lands in the occupation of *Woolleston*, that when connected with the subsequent conduct of *E. Hyde* and the succeeding impropiators, it was evidence of the *modus* of twopence an acre for *grass land* mowed for hay having been immemorially paid to the rector, in lieu of tithe hay throughout the parish ; for that *Hyde* and his successors, notwithstanding the said decree, had constantly accepted thereof until the plaintiff purchased the rectory, whether the lands were part of the fifteen hundred acres occupied by *Woolleston* or not. They further said, that they were then seised in fee of four thousand seven hundred acres of land and upwards, which were, as they believed, considered within the parish, and that the said lands were then in the occupation of the several persons in their answers mentioned. They admitted, that they derived title thereto from persons claiming under *Woolleston*, but could not set forth what particular parts of such lands were the estate of *Woolleston*, or whether the said fifteen hundred acres were part of the land belonging to the hospital, or whether the lands in the occupation of any other of the defendants were the particular lands mentioned in the report.

The Governors of Guy's Hospital say, that the lands in the possession of the defendants belong to the hospital ;

that no tithes, except of corn and grain, are due in kind ;

that all the impropiators, except the plaintiff, had, notwithstanding the decree in the case of *Hyde v. Woolleston*, accepted of 2d. an acre for *grass land* mowed, in lieu of tithe hay.

The plaintiff replied ; the defendants rejoined ; and witnesses were examined on both sides ; and on the thirtieth of June 1778, upon hearing counsel several days for the several parties ; and reading the proofs in the cause ; and the following evidence on behalf of the plaintiff, to wit, a particular of a lease in the augmentation office, dated the sixth of February 1560, to *Edward Hanby* and *James Buxton* ; another, dated the twentieth of January 1568, to *Nicholas Twydall* and others ; letters patent in the plaintiff's possession, dated the tenth of May, in the thirty-eighth year of *Queen Elizabeth*, to *Henry Best* ; a writ of injunction in the plaintiff's possession, made in a cause in chancery between *Anthony Thompson*, plaintiff, and *William Wise* and

The cause heard ; and the evidence read.

BENNETT
against
ALLEN &c.

and others, defendants, of the first of *July*, in the tenth year of *Charles the First*; a commission of sequestration, and the return in the same cause, dated the thirtieth of *June*, in the seventeenth year of *King Charles the First*; a deed poll in the plaintiff's possession, dated the fifteenth of *July* 1641, from *George Tilson* to *John Tilson*; an assignment of a lease of the rectory, dated the eleventh of *May*, in the thirty-eighth year of *Queen Elizabeth*, *Henry Best*, &c.; another, dated the thirtieth of *November*, in the forty-fifth year of the said queen; and several other leases in the plaintiff's possession; and inquisition *post mortem* *Anthony Thompson*, dated the twenty-sixth of *May*, in the twenty-first year of *Charles the First*; the bill, answer, and depositions, in a cause in the exchequer between *Eliza Hyde*, plaintiff, and *A. Woollaston*, defendant; and decrees in the same cause, dated the sixteenth of *July* 1723 and the fourth of *July* 1724; a bill filed in *Michaelmas Term*, in the second year of *Charles the First*; the answer and the depositions and proceedings in a cause in the exchequer between *Anthony Thompson*, plaintiff, and *Sir Oliver Boteler* and others, defendants; articles of agreement, dated the fifteenth of *March* 1743, between *F. Williams* and *Sir Thomas Peyton*; an order to dismiss a bill in chancery between the same parties, dated the eleventh of *May* 1744; *notitia parochialis*, in the archbishop's office at *Lambeth*, dated in 1705; articles of agreement, dated the twenty-ninth of *June* 1726, between *E. Hyde* and *W. Hyde*; an affidavit made by *William Goodred*, a witness examined in this cause, sworn the twenty-fourth of *November* 1773; a lease by letters patent at THE ROLLS, dated the twenty-second of *June*, in the eleventh year of *Queen Elizabeth*, to *N. Twydall* and others; another lease, dated the seventeenth of *January*, in the twenty-sixth year of the said queen, to *F. Gunter*; a commission of survey in the exchequer, of the twelfth of *February*, in the eighth year of *James the First*; a record of entries in the common pleas, in the cause of *Sowter v. Clark*, of *Michaelmas Term*, in the fifteenth year of *James the First*; the information, answer, and depositions in a cause in THE DUCHY COURT OF LANCASTER, between the *Attorney General*, at the relation of *Sir Oliver Boteler, Knight*, against *Thomas Clarke* and *A. Thompson*; a decretal order in the same cause, dated the eleventh of *February*, in the first year of *Charles the First*; the information and answers in the same court between the same parties; an order dated the twenty-third of *April*, in the third year of *Charles the First*; an order in chancery, in a cause between *Anthony Thompson*, plaintiff, and *W. Wise* and others, defendants, of the tenth of *July*, in the ninth year of *Charles the First*; an order in the same cause, dated the fourteenth of *July*, in the ninth year of *Charles the First*; an order in the same cause, dated the twenty-eighth of *June*, in the tenth year of *Charles the First*; an ecclesiastical survey of *Sutton vicarage*, in THE FIRST FRUITS OFFICE, dated in the sixth year of *Henry the*

the Eighth; an order in the exchequer, in a cause between *the Attorney General* and *Anthony Thompson*, dated the seventeenth of *May*, in the fifteenth year of *Charles the First*; an order in the same cause, dated the twenty-sixth of *January*, in the fourteenth year of *Charles the First*; another, dated the twenty-fifth of *June*, in the seventeenth year of *Charles the First*; another, dated the twenty-ninth of *June*, in the seventeenth year of *Charles the First*; another, dated the third of *February* 1641 and the fourteenth of *February* 1641: AND ALSO UPON READING the following evidence on behalf of the defendants, to wit, articles of agreement of the third of *June* 1608, in the sixth year of *James the First*, between *Francis Morrice* of the one part, and *Thomas Clarke*, bachelor of divinity, of the other part; an ecclesiastical survey of the vicarage of *Sutton*, in THE FIRST FRUITS OFFICE, in the twenty-sixth year of the reign of *Henry the Eighth*; a record of entries in the common pleas, in the cause of *Sowter v. Clarke*, of *Michaelmas Term*, in the fifteenth year of *James the First*; an information, answer, and depositions, in a cause in THE DUCHY COURT OF LANCASTER, between *the Attorney General*, at the relation of *Sir O. Boteler, Knight*, plaintiff, against *Thomas Clarke* and *Anthony Thompson*; a decretal order in the same cause, dated the eleventh of *February*, in the first year of *Charles the First*; depositions taken in the same cause to suppress the evidence of *W. Grubb*; an order of the sixth of *February*, in the first year of *Charles the First*, made in the same cause; an information and answers in the same court between the same parties; an order, dated the twenty-third of *April*, in the third year of *Charles the First*; a bill filed in the court of exchequer, in the second year of *Charles the First*; the answers, depositions, and proceedings in a cause between *Anthony Thompson*, plaintiff, against *Sir O. Boteler* and others, defendants; a bill and answers in a cause in the court of exchequer, filed *Michaelmas Term*, in the third year of *George the First*, between *W. Hyde*, plaintiff, and *W. Delamore*, defendant; a bill, answer, and proceedings, in another cause in the said court, between *E. Hyde*, plaintiff, and *A. Woolloston*, defendant; the orders in the same cause, one dated the sixteenth of *July* 1723, the other the fourth of *July* 1724; a terrier taken from the episcopal office of the *Lord Bishop of Lincoln*, at *Bugden*, in *Huntingdonshire*, dated the twenty-fourth of *May* 1708; a bill and answer in a cause in the court of chancery between *F. Williams*, clerk, plaintiff, and *Sir T. Peyton, Bart.* and *Bridget* his wife; articles of agreement, dated the fifteenth of *March* 1743-4, between *Frederick Williams*, vicar, and *Sir T. Peyton* and his wife, rectors of *Sutton*; and on debate of the matter;

BENNETT
against
ALLENDE.

THE COURT ordered the following issues to try,

Issues directed
FIRST, to try,

BENNETT
against
ALLENBY.
1st, Whether
the impropiator
is to receive 2d.
an acre in lieu of tithe hay.

FIRST, "Whether a *modus* of twopence for every acre of
" grass land mowed for hay within the parish of *Sutton*
" hath been paid to the impropiators by the occupiers of
" such lands respectively, in lieu of tithe hay arising there-
" from."

2dly, Whether
the impropiator
is to receive
certain sums in
lieu of the tithes
of calves.

SECONDLY, "Whether there has been immemorially paid to
" the impropiator, by the occupiers of land within the parish,
" in lieu of the tithe of calves calved therein, the several *moduses*
" following, THAT IS TO SAY, in the years in which the respective
" occupiers have not had so many as seven calves, one halfpenny
" for every calf; in the years in which they have respectively
" had seven calves, and no more, one shilling and fourpence
" halfpenny for all such calves in the years in which such
" occupiers have respectively had eight calves, and no more;
" seventeenpence for all such calves, in the years in which they
" have respectively had nine calves, and no more; and in
" the years in which they have respectively had ten calves, and
" no more, eighteenpence, for all such calves; and so on for
" progressive numbers above ten."

3dly, Whether
the impropiator
is to receive 1d.
a foal, in lieu of
the tithes there-
of.

THIRDLY, "Whether a *modus* of one penny for every foal
" foaled in the parish, in lieu of tithe in kind of foals foaled
" therein, hath been paid to the impropiator, in lieu of the
" tithe in kind of such foals."

4thly, Whether
the vicar is en-
titled to the
tithes of milk in
kind.

FOURTHLY, "Whether the vicar of the parish and all his
" predecessors have been entitled to receive the tithe of milk
" within the said parish, as belonging to the said vicarage, and
" part of the endowment thereof, or some augmentation of such
" endowment."

5thly, Whether
the occupiers in
*Sutton St. Ma-
ry* pay 4lb. of
butter for a
milch cow, and
2lb for a strap;
and the occu-
piers in *Sutton
St. James* and
*Sutton St. Ed-
monds* 2lb. for a
milch cow and
1lb. for a strap,
in lieu of tithe
milk;

FIFTHLY, "Whether such *moduses*, as are herein after parti-
" cularly mentioned, have been rendered or paid in lieu of
" tithe milk, by the owners of cows yielding milk, or been
" payable to and accepted by the vicar of the said parish for the
" time being, THAT IS TO SAY, for every milch cow within the
" hamlet of *Sutton Saint Mary*, part of the said parish, four
" pounds of butter for every strap milch cow and heifer of the
" first calf, and two pounds of butter, in discharge of all tithes
" of milk of such kine and heifers; and for every milch cow
" kept as aforesaid within the hamlets of *Sutton Saint James*
" and *Sutton Saint Edmonds*, two pounds of butter and one
" pound for every strap milch cow and heifer of the first calf;
" such butter being paid between *May Day* and *Lammas*, in full
" for the tithe of milk of such kine and heifers payable to the
" vicar of the said parish from the inhabitants of the said
" hamlets of *Sutton Saint Mary*, *Sutton Saint James*, and *Sutton*
" *Saint*

“ *Saint Edmonds* ; and threepence for every milch cow ; and
 “ three halfpence for every strap milch cow and heifer of the
 “ first calf kept within the hamlet of *Sutton Saint Nicholas*,
 “ otherwise *Lutton*, otherwise *Lutton Hurn*; in full of the tithe
 “ of milk of all kine and heifers within the said hamlet of
 “ *Sutton Saint Nicholas*, otherwise *Lutton*, otherwise *Lutton*
 “ *Hurn*.”

BENNETT
 against
 ALLEBY.

and 3d. a milch
 cow, and 1½d. a
 strap in *Sutton*
St. Nicholas.

SIXTHLY, “ Whether the vicar of *Sutton* hath been, by
 “ endowment, prescription, or otherwise, entitled to the tithe
 “ of the agistment of sheep, and of all manner of dry, barren,
 “ and unprofitable cattle fed, kept, and depastured within the
 “ said parish and the titheable places thereof.”

6thly, Whether
 the vicar is enti-
 tled to agist-
 ment tithe.

SEVENTHLY, “ Whether the vicar is entitled, for sheep fed
 “ and depastured in the parish, to the several payments
 “ following, THAT IS TO SAY, if sheep have been brought into
 “ the said parish in any year, and sold out again the same year
 “ without being sheared, there hath been constantly paid one
 “ farthing for every month during which each of the said sheep
 “ had been depastured within the said parish, and threepence
 “ for every sheep for a year ; and if sheep are brought into the
 “ said parish after *Candlemas*, and sheared in the said parish
 “ in the same year, there hath been usually paid after the rate
 “ of *one fleece* in every one hundred for every month such sheep
 “ have been depastured within the said parish.”

7thly, Whether
 ¼d. a sheep un-
 sheared, and 3d.
 a year ; and one
 fleece per hun-
 dred a month if
 brought in after
Candlemas.

EIGHTHLY, “ Whether a *modus* of twopence ought to be paid
 “ to the vicar, at *Easter* in every year, or after, upon reasonable
 “ demand, by every person whatsoever occupying any messuage,
 “ cottage, garden, yard, orchard, land, meadow, pasture, or
 “ marsh ground within the said parish and the titheable places
 “ thereof, by the name or names of *hearth silver*, *garden silver*,
 “ and *shot and waxing silver*, in lieu and full discharge of all and
 “ singular tithes of herbs, flowers, roots, apples, pears, plumbs,
 “ nuts, and other fruits, in and upon any gardens, orchards, or
 “ yards within the said parish, yearly growing and arising ;
 “ and of all wood, cuttings, croppings, or loppings of trees
 “ cut during such year, and of herbage and agistment of all
 “ manner of dry, barren, and unprofitable cattle of such person
 “ and persons depastured, fed, and kept within the said parish
 “ and the titheable places thereof ”

8thly, Whether
 2d. a-year is
 payable to the
 vicar, at *Easter*,
 under the deno-
 mination of
hearth silver,
garden silver,
 and *shot and*
waxing silver in
 lieu of garden
 stuff, firewood,
 and the agist-
 ment of barren
 cattle.

The occupiers to be plaintiffs at law, and the impropiator to
 be defendant.

The several issues were accordingly tried by a special jury ;
 and it was found,

The issues
 found,

As to THE FIRST ISSUE, “ That the *moduses* stated therein did
 “ not exist ; but that by ancient custom used in the parish of

1st, That 2d. an
 acre for *High*
Meadow and 1½d.

an acre for *Low Meadow*, when mowed, are payable to the Impropiator in lieu of tithe hay.

BENNETT
against
ALLENBY.

" *Sutton*, and the titheable places thereof, for time whereof the
" memory of man is not to the contrary, an ancient *modus* or
" customary payment or composition of twopence for every acre
" of *Highb Meadow* land mown for hay, and one penny for
" every acre of *Low Meadow* or *Fodder Ground* mown for hay
" within the said parish or titheable places thereof, had been
" paid or rendered to, and accepted by the rector or impropri-
" ator of the said parish for the time being, by the occupiers
" of such lands respectively, in lieu of tithe hay arising from
" such lands."

2dly, That 1d.
for every calf
calved in the pa-
rish is payable to
the impropriator
in lieu of tithe
calves.

As to THE SECOND ISSUE, " That the *modus*, as therein stated,
" did not exist; but that by ancient and established custom
" used within the said parish and the titheable places thereof,
" for time whereof the memory of man is not to the contrary,
" there had been rendered and paid to, and accepted by the
" rector or impropriator of the said parish for the time being,
" by the occupiers of land within the same, a *modus* or custom-
" ary payment of one halfpenny for every calf calved within
" the said parish, or the titheable places thereof, in lieu of the
" tithes of calves."

3dly, That 1d.
for every foal
foaled in the pa-
rish is payable
to the improp-
riator in lieu of
tithe foals.

As to THE THIRD ISSUE, " That by ancient custom used
" within the said parish and the titheable places thereof, for
" time whereof the memory of man is not to the contrary,
" an ancient *modus* or customary payment of one penny for
" every foal foaled within the said parish, or the titheable places
" thereof, had been rendered and paid to the rector or improp-
" riator of the said parish or rectory impropriate for the time
" being, and had been accepted by such rector or impropriator
" in lieu and discharge of the tithe in kind of such foals, as the
" plaintiffs at law had alledged."

4thly, That the
vicar is entitled
to the tithe of all
milk that is
not made into
cheese.

As to THE FOURTH ISSUE, " That the vicar had not been en-
" titled to receive the tithe of milk within the said parish; but
" that the vicar had been endowed of the tithe of milk within
" the said parish and the titheable places thereof (excepting
" such milk as might at any time or times be made into
" cheese.)"

5thly, That the
vicar is only en-
titled, in *Sutton*
St. Mary, to
4lb. of butter
for every milch
cow, and 2lb.
for every strap;
and in *Sutton*
St. James and
Sutton St. Ed.
mond's, to 2lb.
for every milch
cow, and 1lb. for every strap; and in *Sutton St. Nicholas*, to 3d. a milch cow, and 1½d. a strap, in
lieu of the tithes of milk not made into cheese.

As to THE FIFTH ISSUE, " That by ancient custom used within
" the said parish of *Sutton*, and the titheable places thereof,
" for time whereof the memory of man is not to the contrary,
" such ancient *moduses* or customary payments or compositions
" as were therein after particularly mentioned, had been ren-
" dered or paid in lieu of tithe milk, by the owners of cows
" yielding milk, or been payable to and accepted by the vicar of
" the said parish for the time being (that is to say), for every
" milch cow within the hamlet of *Sutton Saint Mary*, part of
" the said parish, four pounds of butter; and for every strap

" milch

“ milch cow and heifer of the first calf, two pounds of butter,
 “ in discharge of all tithe milk of such kine and heifers;
 “ and for every milch cow kept as aforesaid within the hamlets
 “ of *Sutton Saint James* and *Sutton Saint Edmunds*, two pounds
 “ of butter, and one pound of butter for every strap milch cow
 “ and heifer of the first calf, such butter being paid between
 “ *May Day* and *Lammas*, in full for the tithe of milk of such
 “ kine and heifers, payable to the vicar of the said parish from
 “ the inhabitants of the said hamlets of *Sutton Saint Mary*,
 “ *Sutton Saint James*, and *Sutton Saint Edmunds*; and threepence
 “ for every milch cow; and three halfpence for every strap
 “ milch cow and heifer of the first calf kept within the hamlet
 “ of *Sutton Saint Nicholas*, otherwise *Lutton*, otherwise *Lutton*
 “ *Hurn*, in full for the tithe of milk of all kine and heifers
 “ within the said hamlet of *Sutton Saint Nicholas*, otherwise
 “ *Lutton*, otherwise *Lutton Hurn*, as the said plaintiffs at law
 “ had alledged.”

BENNETT
 against
 ALLENBY.

As to THE SIXTH ISSUE, “ That the vicar of the parish of
 “ *Sutton* for the time being then was, and for time whereof the
 “ memory of man is not to the contrary had been, by endow-
 “ ment, prescription, or otherwise, entitled to the tithe of agist-
 “ ment of sheep, and of all manner of dry, barren, and impro-
 “ fitable cattle fed, kept, and depastured within the said parish,
 “ and the titheable places thereof, as the said plaintiffs at law had
 “ in that behalf alledged.”

6thly, That the
 vicar is entitled
 to the tithe of
 the agistment of
 sheep and of all
 barren cattle.

As to THE SEVENTH ISSUE, “ That if sheep had been brought
 “ into the said parish in any year, and sent and sold out again
 “ the same year, without being sheared, there had not constantly
 “ been paid one farthing for every month during which each
 “ of the said sheep had been depastured in the said parish; but
 “ that by ancient custom used within the said parish, from time
 “ whereof the memory of man is not to the contrary, there had
 “ been rendered and paid to the vicar of the said parish for the
 “ time being, or to his lessee or agents, for sheep fed and
 “ depastured within the said parish, the several payments fol-
 “ lowing, THAT IS TO SAY, if sheep had been brought into the
 “ said parish in any year, and sent or sold out again the same
 “ year without being sheared, there had been constantly paid
 “ threepence for every sheep for a year; and if sheep were
 “ brought into the said parish after *Candlemas*, and sheared in
 “ the same parish in the same year, there had been usually
 “ paid after the rate of one fleece in every one hundred for
 “ every month such sheep had been depastured within the
 “ said parish, as the said plaintiffs had in that behalf also
 “ alledged.”

7thly, That the
 vicar is only en-
 titled to 3d. for
 every sheep not
 shorn in the pa-
 rish; to one
 fleece in every
 one hundred for
 every month
 sheep brought in
 after *Candlemas*
 and sheared in
 the parish are
 depastured
 therein, in lieu
 of the agistment
 tithes of such
 sheep.

BENNETT
against
ALLENBY.

8thly, That the vicar is not obliged to receive 2d. a year, at *Easter*, under the denomination of *hearth silver*, *garden silver*, and *shot and waxing silver*, in lieu of the tithes of fire wood, garden stuff, and the agistment of barren cattle.

And as to THE EIGHTH and LAST ISSUE (a), "That by no custom in the parish, for time whereof the memory of man is not to the contrary, an ancient *modus* or customary payment of twopence ought to be rendered and paid to and accepted by the vicar of the said parish for the time being, at the feast of *Easter* in every year, or after upon reasonable demand, by every person whatsoever occupying any messuage, cot, garden, yard, orchard, land, meadow, pasture, or marsh ground within the said parish and the titheable places thereof, by the name or names of *hearth silver*, *garden silver*, and *shot and waxing silver*, in lieu and full discharge of all and singular tithes of herbs, flowers, roots, apples, pears, plumbs, nuts, and other fruit, in and upon any gardens, orchards, or yards within the said parish, yearly growing and arising; and of all wood cutting, croppings, and loppings of trees cut during such year; and of herbage and agistment of all manner of dry, barren, and unprofitable cattle of such person or persons depastured, fed, and kept within the said parish and the titheable places thereof, as the said plaintiffs had alledged."

The bill dismissed with costs.

THE COURT therefore, on the fifth of *July* 1779, ordered the bill to be dismissed with costs both at law and in equity.

SKYNNER, *Chief Baron*.
EYRE, *Baron*.
HOTHAM, *Baron*.
PERRY, *Baron*.

(a) But see as to this issue the cause of Bennett v. Peart, *Easter Term*, 3. Geo. 3. post.

TRIN. TERM,
18 GEO. 3.

MICKLETHWAITE against BATELY.

Norfolk, 14th *July* 1778.

The plaintiff claims tithes as impropriator of the rectory of *Tunstall*, in *Norfolk*; and states the title under which he purchased the same on the 11th of *August* 1773.

THE plaintiff claimed the great and small tithes of the parish of *Tunstall*, in the county of *Norfolk*, as the impropriator thereof; and stated, that the rectory was formerly parcel of the monastery of *Sellon*, in the county of *Suffolk*; that in the year 1649, *Richard Jenkinson* was seised in fee of the said impropriate rectory, with all the rights thereto belonging; that being so seised, he, about the tenth day of *January* 1649, by indenture tripartite made between him and his son and heir apparent of the first part; *William Trundle* and *Edmund Witherby* of the second part; and *Robert Ross* and *Edward Wise* of the third part; for the better support of him the said *Richard Jenkinson* and *Anne* his wife, and for other the purposes in the said indenture mentioned, conveyed the same accordingly; that by several mesne conveyances, the rectory became, before the year 1720, vested in *Sir L. Blackwell*, *Baronet*, since deceased, and, by

by act of parliament made in the seventh year of *George the First*, *Sir John Eyles, Baronet*, and other trustees nominated and appointed in and by the said act; that the said trustees, by indenture dated the ninth of *June* 1726, sold the same to *Sir Lambert Blackwell, Baronet*, subject to the sum of ninepence halfpenny issuing thereout for procurations and synodals to the bishop and archdeacon of *Norwich*, and also six pounds, thirteen shillings, and fourpence yearly for the maintenance of a chaplain in the said church; that it descended to *Sir Charles Blackwell* his son, of whom the plaintiff, about the eleventh of *August* 1773, purchased the same, and had ever since been, and then was, the true and lawful impropriator or owner thereof, and entitled to receive the said tithes. The plaintiff charged, that part of the lands under which the defendant *Fountaine* claimed to be entitled to the tithes, then in the possession of the defendants, was, by virtue of a deed, freed and discharged of tithes great and small, the same being the jointure of *Anne*, the wife of *Richard Jenkinson*, during her life only; and that other parts thereof were discharged only for the lives of *Miles Jenkinson* and *Eliza* his wife, and no longer; that the lands respectively occupied by the defendant *Bately* and others within the said parish were all subject to the payment of tithes; and that the same were due only to him the plaintiff, and not to any other. He charged, that the defendant *Fountaine* was not the true and lawful impropriator of the said rectory, and that no grant or conveyance thereof had at any time been made to him or to any other person under whom he claimed.

MICKLE-
THWAITE
against
BATELY.

The defendant *Bately* and others said, that the defendant *B. Fountaine*, who claimed the tithes of the parish, was the true and lawful owner and impropriator thereof, and had for several years past paid the synodals and procurations to the bishop and archdeacon of *Norwich*, and likewise the annual salary to a curate or chaplain for serving the cure of the said parish in the chancel of a church formerly standing within the same, there being no other place of worship within the said parish; and that the respective landlords of the defendants *Bately*, *Wright*, and *Artis*, had held their respective lands freed and discharged from the payment of tithes under and by virtue of some ancient grant or otherwise.

The defendants say, that *B. Fountaine* is the true and legal owner of the rectory.

The defendant *B. Fountaine* denied, that the plaintiff was the owner or impropriator of the rectory; and stated the deed in the bill mentioned, dated the tenth of *January* 1649, and the *fine and recovery* suffered in pursuance thereof; and insisted, that the person of whom the plaintiff had purchased never was seised or possessed thereof, or entitled thereto, and therefore had no right to dispose of the same.

The defendant *B. Fountaine* denies the plaintiff's title to the rectory.

MICKLE-
THWAITE
against
BATELY.

The bill dismiss-
ed.

THE COURT retained the bill for a year, with liberty to the plaintiff in the mean time to try his title at law.

The plaintiff neglected to proceed to a trial of his title, and the bill was dismissed with costs.

TRIN. TERM,
18. GRO. 3.

PAYNE, Widow, against PAYNE.

Sussex, 3d July 1778.

The owner of
the corn tithes
of the Town
Ward, in the
parish of East
Grinstead, in
Sussex, claims them in kind from Michaelmas 1774.

THE plaintiff, as tenant for life under the will of her late husband, claimed the tithes of corn and grain which had arisen in a certain ward of the parish of *East Grinstead*, in the county of *Sussex*, called the *Town Ward*, from *Michaelmas* 1774.

The defendants
insist on *modus*
of 2s 6d an a-
cre for wheat,
and 1s. 6d an
acre for lent
corn grown on
lands in the said
Town Ward, in
lieu of the tithes
of wheat and
lent corn in
kind;

and say, that
the lands, on an
average, are not
worth more than
10s. an acre.

The defendants admitted, that they occupied lands in the *Town Ward*; and set up a *modus*, that all occupiers of land there had always paid to the impropriator, at *Michaelmas*, or as soon after as the same had been demanded, the sum of two shillings and sixpence an acre for every acre of such land in their occupation, when the same had been sown with wheat, in lieu of the tithes thereof; and so after that rate for a greater or less quantity than an acre: another *modus* of one shilling and sixpence an acre for every acre of such land when sown with *lent corn*, and in lieu of the tithes of lent corn; and so after that rate for a greater or less quantity than an acre. They further said, that most of the arable, meadow, and pasture lands in the parish were, one acre with another, worth, to be letten, and were letten, at ten shillings an acre by the year; but they admitted, that the said lands were much improved, and of much greater yearly value than formerly; that within forty or fifty years last past much more of the said land had been converted into tillage; and that several small parts thereof were part of *Asbdown Forest*, and taken from thence, and were formerly of little or no value, and uncultivated; but they said, that the said forest did never pay any manner of tithes. They admitted, that the plaintiff, before *Michaelmas* 1774, gave the defendants notice to set out their tithes of corn and grain in kind; but insisted, they were not bound to set out such tithes in kind, as the plaintiff was bound to accept of the said *modus*.

The cause
heard.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; when upon hearing counsel on both sides; and reading several depositions on behalf of the defendants; and, for the plaintiff, the answer, and several depositions,

depositions, and receipts; the cause was adjourned to this day for the opinion of the Court;

PAYNE
against
PAYNE.

THE COURT ordered the deputy remembrancer to take an account of what was due for the tithes of corn and grain demanded by the bill, with costs.

The tithes in
kind decreed,
with costs.

THE COURT FULL.

COHAM *against* WOOD.

TRIN. TERM,
18. GEO. 3.

Middlesex, 15th July 1778.

THE vicar (a) of *Chiswick*, in the county of *Middlesex*, claimed the small tithes of the parish in kind; and stated, that the defendant *Wood*, as tenant to the defendant *Weatherstone*, had, for several years, held a large quantity of rich garden ground in the parish, on which he had cultivated all sorts of vegetables, fruits, and other kinds of garden stuff; that the defendant *Allum*, as tenant to *Weatherstone*, occupied an ozier ground, called *the Long Meadow*, planted with ozers, and had, from time to time, cut and sold ozers therefrom in the way of his trade of a basket maker; and that they had refused to set out the tithes in kind thereof, under a pretence that the ozers were tithe free, and that only the thirtieth part of the produce of the garden ground was payable for the tithes thereof. The bill therefore prayed, that *Weatherstone* might set forth what estate he had or claimed in the said ozier ground; that *Allum* might account for the value of the ozers by him cut therefrom, and the tithes thereof; that *Wood* might discover what tithes the said garden grounds had produced, and pay him the value thereof; and that his, the plaintiff's, right to the said tithes as vicar might be established.

The vicar of *Chiswick*, in *Middlesex*, is only entitled to the thirtieth part of the produce of garden grounds in the *Prebend Manor of Chiswick*, at the rate of 1s. 4d. an acre yearly for the produce of garden ground, and 2d. a rod for the produce of the garden walls therein, in lieu of the tithe thereof. The ozier bed called *the Long Meadow*, in the said manor is tithe free.

The defendants *Wood* and *Allum* admitted, that the plaintiff had resided at *Chiswick* fourteen years as vicar of the parish; but they left him to prove his institution and induction thereto; and denied that there was any endowment belonging to the

(a) On the second of May 1681, in the thirty-third year of Charles the Second, the case of *Lord Fauconberg v. Wardour* came before the court of exchequer. The bill stated, that the dean and chapter of *St. Paul's* were the owners of the rectory of *Chiswick*, in *Middlesex*, and had demised to him the tithes of corn, grain, and hay, growing upon any grounds in the parish; and he claimed of the defendants *Wardour* and *Ellesby* the tithes of pease, beans, and hay under this demise. The defendant *Wardour* said, that there were forty shillings a-year payable to the vicar in lieu of all tithes; and that the pease and beans he had grown had been used in the family. The defendant *Ellesby*,

who was the vicar, disclaimed all title to the tithes in question. The Court said, that it appeared most clearly from the proofs in the cause, that the impropiator was entitled to the tithes of grass, hay, pease, and beans, growing as well in orchards and gardens as elsewhere; and that no such sum as forty shillings a-year, or any other, had ever been paid by the occupiers of *Wardour's* farm in lieu thereof. But as it also appeared, that the pease and beans which *Wardour* had had thereon were all gathered green and eaten in his house, and that none of them had been sold, THE COURT dismissed the bill as against the vicar, and only ordered *Wardour* to pay the plaintiff moderate costs.

CONAM
against
WOOD.

vicarage by which he was entitled to the tenth of the produce of garden grounds.

The defendant *Wood* said, that, by the immemorial usage of the parish, the vicar was only entitled to the vicarial tithes after the rate of *one in thirty* instead of *one in ten* in kind, from the owners and occupiers of lands in the *Prebend Manor of Chiswick*, part of the said parish; and that he had immemorially received from them, in lieu of the vicarial tithes in kind within the said manor, after the rate, yearly, of one shilling and fourpence an acre for the garden ground, and twopence a rod for the walling.

The defendant *Allum* said, he had held, from *Easter 1773*, a parcel of ground, called *the Prebend Meadow*, part of *the Prebend Manor of Chiswick*, which had been, for many years past, planted with ozers; that he had twice cut them, and used the cuttings in his trade of a basket-maker; that the said *Prebend Meadow* had been let to him tithe free; but that if tithes were payable for the same, it was only at the rate of *one in thirty*, according to the custom of *the Prebend Manor*.

The defendant *Weatherstone* insisted on the said *modus* of *one in thirty*, at the rate of one shilling and fourpence an acre for the produce of the garden ground, and twopence a rod for the fruit growing against the walls in *the Prebend Manor*; and that the *lay impropriator* of the rectory had immemorially received from the tenants of the said manor only *one thirtieth* part of the produce thereof for the great tithe, or a compensation for the same in proportion thereto; that he, the defendant, held *the Manor Lands* by lease from the collegiate church of *Saint Peter*, in *Westminster*, and was, by virtue thereof, entitled to *the Prebend Meadow*, called *Long Meadow*, containing eleven acres, thirteen perches; that the whole of the said meadow was exempt from payment of any manner of tithes; but by what means the same had become exempt, other than by immemorial usage and forbearance, he could not set forth; that he had let the same to the defendant *Allum* tithe free; and that no tithes had ever been claimed by any former rector or vicar of the said parish for the said meadow ground.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and on hearing counsel for all parties; and reading the proofs in the cause for the plaintiff; and a receipt from the plaintiff to *Allum*, dated the twenty-sixth of *June 1773*; and the answers of the defendants;

THE COURT, which was full, ordered the bill to be dismissed, without costs.

PHILLIPS

PHILLIPS *against* PRYTHERICK.MICH. TERM,
18. GEO. 3.

Caermarthenshire, 16th July 1778.

THE bill stated, that the *Bishop of Lincoln*, being, in right of his bishopric, entitled to the rectory of *Llanlley*, otherwise *Llanllney*, and the chapelry of *Saint Michael in Roscorney*, and to all tithes, as well great as small, yearly arising within the said rectory and chapelry, in the county of *Caermarthenshire*, did, by indenture dated the nineteenth of *March 1771*, demise to the plaintiff all that the said rectory and chapelry, with all and singular the rights, &c. to the late *Priory of Caermarthenshire* belonging, and all the tithes, oblations, and other profits, with the appurtenances, to hold for twenty-one years, at sixteen pounds *per annum* payable to the *Bishop*, and sixteen pounds *per annum* payable to the *vicar*; that by virtue of the said demise, the plaintiff was justly entitled to, and ought to receive, all and every the tithes in kind of corn, grain, hay, grass, and all other tithes, both great and small, within the said rectory and chapelry. The bill then stated, that the defendant *Prytherick* and others had, for several years, occupied lands therein, and had corn, grain, grass cut and made into hay, barren and unprofitable cattle, sheep, milk cows, and divers other titheable matters, the tithes of which they had refused to pay, under pretence of a *modus* of four pounds *per annum*; but the plaintiff charged, that if such a payment ever in fact existed, it only was a *temporary composition*. The bill therefore prayed an account and payment.

The bishop of *Lincoln*, as impropriator of the rectory of *Llanlley*, with the chapel of *St. Michael in Roscorney*, in *Caermarthenshire*, and his lessee of the tithes thereof, claims the great and small tithes of the parish in kind, particularly of the ancient farm called *Forest Glynn Cotby*, and three other farms called *Breebwa*, *Llystin*, and *Maes y Gro*.

The defendant *Prytherick* and others denied, that either the *Bishop*, or the plaintiff as claiming under him, were entitled to the tithes of corn, grain, hay, grass, or any other rectorial tithes arising within the said rectory and chapelry in kind; for that the family of the *Rudds*, and those under whom they claimed, had been immemorially owners and occupiers of a capital messuage and demesne lands called *Forest Glynn Cotby*, situate partly in the lordship of *Forest Glynn Cotby*, within the chapelry of *Saint Michael of Roscorney*, and partly in the several parishes of *Berofba* and *Llanvihangel Yersb* out of the said chapelry, and which then comprehended the *Forest Demesnes* and three other tenements in the said defendant's occupation; that the owners or occupiers of such part of the said ancient tenement and demesne lands of *Forest Glynn Cotby* which lay within the said chapelry and lordship had never paid, or been liable to pay, any tithes in kind to the *Bishop of Lincoln*, or any of his predecessors or tenants, or any claiming under him, but were exempt therefrom under a *modus* of four pounds a-year, which they had immemorially paid to the *Bishop of Lincoln* and his predecessors *Bishops of Lincoln*, or those claiming under him or them, in lieu of all tithes of corn, grain, grass made into hay, and other great, predial, personal, and

The defendant *Prytherick* says, that the owners of *Forest Glynn Cotby*, *Breebwa*, *Llystin*, and *Maes y Gro*, are also owners of the tithes thereof;

CONAM
against
WOOD.

vicarage by which he was entitled to the tenth of the produce of garden grounds.

The defendant *Wood* said, that, by the immemorial usage of the parish, the vicar was only entitled to the vicarial tithes after the rate of *one in thirty* instead of *one in ten* in kind, from the owners and occupiers of lands in the *Prebend Manor of Chiswick*, part of the said parish; and that he had immemorially received from them, in lieu of the vicarial tithes in kind within the said manor, after the rate, yearly, of one shilling and fourpence an acre for the garden ground, and twopence a rod for the walling.

The defendant *Allum* said, he had held, from *Easter 1773*, a parcel of ground, called *the Prebend Meadow*, part of *the Prebend Manor of Chiswick*, which had been, for many years past, planted with oziers; that he had twice cut them, and used the cuttings in his trade of a basket-maker; that the said *Prebend Meadow* had been let to him tithe free; but that if tithes were payable for the same, it was only at the rate of *one in thirty*, according to the custom of *the Prebend Manor*.

The defendant *Weatherstone* insisted on the said *modus* of *one in thirty*, at the rate of one shilling and fourpence an acre for the produce of the garden ground, and twopence a rod for the fruit growing against the walls in *the Prebend Manor*; and that the *lay improPRIATOR* of the rectory had immemorially received from the tenants of the said manor only *one thirtieth* part of the produce thereof for the great tithe, or a compensation for the same in proportion thereto; that he, the defendant, held *the Manor Lands* by lease from the collegiate church of *Saint Peter, in Westminster*, and was, by virtue thereof, entitled to *the Prebend Meadow*, called *Long Meadow*, containing eleven acres, thirteen perches; that the whole of the said meadow was exempt from payment of any manner of tithes; but by what means the same had become exempt, other than by immemorial usage and forbearance, he could not set forth; that he had let the same to the defendant *Allum* tithe free; and that no tithes had ever been claimed by any former rector or vicar of the said parish for the said meadow ground.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and on hearing counsel for all parties; and reading the proofs in the cause for the plaintiff; and a receipt from the plaintiff to *Allum*, dated the twenty-sixth of *June 1773*; and the answers of the defendants;

THE COURT, which was full, ordered the bill to be dismissed, without costs.

PHILLIPS

PHILLIPS *against* PRYTHERICK.MICH. TERM,
18. GEO. 3.

Caermarthenshire, 16th July 1778.

THE bill stated, that the *Bishop of Lincoln*, being, in right of his bishopric, entitled to the rectory of *Llanlley*, otherwise *Llanllney*, and the chapelry of *Saint Michael in Roscorney*, and to all tithes, as well great as small, yearly arising within the said rectory and chapelry, in the county of *Caermarthen*, did, by indenture dated the nineteenth of *March 1771*, demise to the plaintiff all that the said rectory and chapelry, with all and singular the rights, &c. to the late *Priory of Caermarthen* belonging, and all the tithes, oblations, and other profits, with the appurtenances, to hold for twenty-one years, at sixteen pounds *per annum* payable to *the Bishop*, and sixteen pounds *per annum* payable to *the vicar*; that by virtue of the said demise, the plaintiff was justly entitled to, and ought to receive, all and every the tithes in kind of corn, grain, hay, grass, and all other tithes, both great and small, within the said rectory and chapelry. The bill then stated, that the defendant *Prytherick* and others had, for several years, occupied lands therein, and had corn, grain, grass cut and made into hay, barren and unprofitable cattle, sheep, milk cows, and divers other titheable matters, the tithes of which they had refused to pay, under pretence of a *modus* of four pounds *per annum*; but the plaintiff charged, that if such a payment ever in fact existed, it only was a *temporary composition*. The bill therefore prayed an account and payment.

The bishop of *Lincoln*, as impropriator of the rectory of *Llanlley*, with the chapel of *St. Michael in Roscorney*, in *Caermarthenshire*, and his lessee of the tithes thereof, claims the great and small tithes of the parish in kind, particularly of the ancient farm called *Forest Glynn Cotby*, and three other farms called *Breebwa*, *Llystin*, and *Maes y Gro*.

The defendant *Prytherick* and others denied, that either *the Bishop*, or the plaintiff as claiming under him, were entitled to the tithes of corn, grain, hay, grass, or any other rectorial tithes arising within the said rectory and chapelry in kind; for that the family of *the Rudds*, and those under whom they claimed, had been immemorially owners and occupiers of a capital messuage and demesne lands called *Forest Glynn Cotby*, situate partly in the lordship of *Forest Glynn Cotby*, within the chapelry of *Saint Michael of Roscorney*, and partly in the several parishes of *Berosba* and *Llanvibangel Yersb* out of the said chapelry, and which then comprehended *the Forest Demesnes* and three other tenements in the said defendant's occupation; that the owners or occupiers of such part of the said ancient tenement and demesne lands of *Forest Glynn Cotby* which lay within the said chapelry and lordship had never paid, or been liable to pay, any tithes in kind to *the Bishop of Lincoln*, or any of his predecessors or tenants, or any claiming under him, but were exempt therefrom under a *modus* of four pounds a-year, which they had immemorially paid to *the Bishop of Lincoln* and his predecessors *Bishops of Lincoln*, or those claiming under him or them, in lieu of all tithes of corn, grain, grass made into hay, and other great, predial, personal, and

The defendant *Prytherick* says, that the owners of *Forest Glynn Cotby*, *Breebwa*, *Llystin*, and *Maes y Gro*, are also owners of the tithes thereof;

PHILLIPS
against
PRYTHIERICK.

and mixed tithes arising upon and within such part of the said capital messuage, tenement, and demesne lands lying within the said chapelry and lordship, held, enjoyed, and gathered by them.

and that he, as tenant thereof, had collected the tithes, and converted them to his own use.

The defendant *Prytherick* said, that for three years past he had collected, as he had a right to do, the tithes of such corn, grain, and hay as had arisen on such part of *Forest Demesne* as lay in the said chapelry, and on *Breevha Tenement* and *Llystin Tenement*, and converted the same to his own use.

The defendants *Evans* and *Lewis* say, that there are *modus* due in lieu of the tithes of hay, calves, colts, honey, lambs, milk, cheese, sheep, geese, and wool, arising on the other lands in the parish.

The defendants *S. Evans* and *W. Lewis* said, that there were due from the occupiers of other farms within the said chapelry; and that there had been usually paid by them yearly, to the person entitled to the tithes arising on the lands within the said chapelry (other than the said *Forest Demesne* and the three farms which lie within the said chapelry, namely *Breevha*, otherwise *Tyr Davy Rees*, *Llystin*, and *Maes y Grove*), viz. in lieu of tithe hay, twopence; by every married man, threepence; every yearly calf, one halfpenny; for every colt, one penny; filly, one halfpenny; honey, fourpence; every tenth lamb in kind; but if they exceed six, the person entitled to the tithe had the seventh, paying to the farmer short of ten; but if the lambs be under seven in number, the farmer pays twopence for each lamb; for every milch cow, in lieu of the tithe of milk and cheese, fourpence; for every score of sheep milked, eightpence, and so in proportion; a goose yearly, and the tenth pound of wool; and that there was paid for every tradesman, blacksmiths excepted, fourpence yearly.

The plaintiff ordered to make the owner of *Forest Glynn Cothy* and the other farms a party to the bill.

The plaintiff replied; the defendants rejoined; and several witnesses were examined on the part of the defendants only; and the cause came on to be heard on the twelfth day of *July* 1775; when, upon hearing counsel on both sides;

It was ordered, that the further hearing should be adjourned, with liberty to the plaintiff to amend his bill, and make the owner of the premises whereof the tithes were demanded by the bill a party thereto, but without the payment of the costs of the day.

Elizabeth Gwynn an infant, the owner of the said premises, made a defendant to the bill;

The plaintiff amended his bill accordingly; and stated, that the other defendants pretended that their lands were not liable to the payment of tithes, for that the same were part of an ancient tenement, called *Forest Glynn Cothy*, the inheritance whereof belonged to the defendant *Elizabeth Gwynn*; that the owners thereof had immemorially paid four pounds a-year satisfaction of all tithes, great and small, arising thereon; and that, by virtue thereof, the owner was entitled to the tithes; and expressly CHARGED, that the said tithes were due to him in kind, for that such *modus* never existed as such, but was only a temporary

very composition between the rector of the parish and the owner of the lands ; AND PRAYED a discovery of the said *Gwynn's* title to the said tithes ; that such pretended *modus* might be set aside ; and that he might have the relief prayed by his original bill.

PHILLIPS
against
PATTNAICK.

The defendant *E. Gwynn* appeared by her guardian, and insisted on the validity of the said *modus*.

The defendant
Elizabeth Gwynn
insists, that there

is a *modus* of 4l. a-year, in lieu of all tithes arising thereon.

The plaintiff replied ; the defendant rejoined ; and witnesses were examined only on the part of the defendant ; and the cause came on to be heard on the fifth day of *February* last ; when upon hearing counsel on both sides ;

The cause
heard.

THE COURT ordered it again to stand over, with liberty to the defendant to amend her answer, upon payment of the costs of the day ; that if, on the coming in of the amended answer, it should be necessary, the parties were to be at liberty to examine witnesses again ; that the evidence already taken should be read ; and that the defendants should admit the lease stated in the bill to be read.

The defendant
ordered to a-
mend her an-
swer, which she
amends accord-
ingly, and there-
by states,

The defendant *Gwynn* put in a subsequent answer by her guardian ; and thereby said, that she was seised in fee of the said ancient tenements and lands called *Forest Glynn Cothy*, and of three other farms called *Breebua*, *Llytlin*, and *Maes y Grove* ; that she, and all those whose estate she had in the said three last mentioned farms, and in so much of *Forrest Glynn Cothy* as lay in the said chapelry, had immemorially paid to the rector of the rectory and chapelry the sum of four pounds yearly, as a pension or payment in satisfaction of all tithes renewing or increasing upon the said three tenements, and on so much of *Forest Glynn Cothy* as was situate in the said chapelry ; that she, and all those whose estate she had in the said tenements and parcel of a tenement, had immemorially been used to have, in respect of the said pension, the tenth part of all corn, grain, hay, and other titheable matters, arising on the said three tenements, and so much of the said other tenement as lay within the said chapelry.

that *Forrest Glynn Cothy*, *Breebua*, *Llytlin*, and *Maes y Grove*, lie in the chapelry of *Reford* ; and that 4l. a year had been immemorially paid in lieu of the tithes of the same, and the owners thereof to receive all the tithes arising thereon.

The cause came on again on the seventh instant ; and upon hearing counsel ; and reading on behalf of the defendants the depositions of several witnesses, and divers entries in several books touching the payment of four pounds as and for such *modus*, it was adjourned over to the fourteenth instant ; when, upon the further hearing for all parties, it was ordered to stand over to a further day for the judgment of the Court ; and on the sixth of *July* 1778, the Court directed the following issues, to try,

The cause
heard ;

and after being
twice adjourned,
the Court di-
rected issues to
try,

FIRST,

PHILLIPS
against
PRYTHWICK.

Whether the said
modus was pay-
able as afore-
said;

FIRST, "Whether she the said *Elizabeth Gwynn*, and all those
" whose estate she hath in the three several tenements or farms
" in the pleadings of this cause mentioned, called by the several
" names respectively of *Breebua*, *Llystin*, and *Maes y Grove*,
" situate, lying, and being within the chapelry of *Saint Michael*
" in *Roscorney*, in the county of *Caermarthen*, and in such part of
" a certain ancient capital tenement and demesne lands called
" *Forest*, as lieth within the said chapelry, hath and have, from
" time whereof the memory of man is not to the contrary, paid
" to the rector of the rectory of *Llantley*, otherwise *Llanlloney*,
" and the chapelry of *Saint Michael* in *Roscorney* aforesaid,
" for the time being, the sum of four pounds yearly, as a pension
" or payment in satisfaction of all tithes arising or increasing
" upon the said three tenements or farms, and upon so much of
" the said *Forest Demesne Lands* as is situate within the said cha-
" pelry."

and the owners
of the premises
thereby entitled
to receive the
tithes, great and
small, arising
thereon.

SECONDLY, "Whether she the said *Elizabeth Gwynn*, and all
" those whose estate she hath in the said three several tenements
" or farms, and in the said part of the said *Forest Demesne Lands*,
" hath and have, from the time whereof the memory of man
" is not to the contrary, been used to have, and ought to have,
" in respect of the said pension or payment so paid to the said
" rector for the time being, the tithes or tenth part of all corn,
" grain, hay, and other titheable matters arising on the said
" three tenements or farms, and on so much of the said
" *Forest Demesne Lands* as are situate within the said cha-
" pelry."

The owner of
the premises to
be plaintiff at
law.

The defendant *Gwynn* to be plaintiff at law; the issues
to be tried by a special jury; and the judge to indorse, &c. &c.

A verdict found
in favour of the
plaintiff at law.

The said issues were accordingly tried, and the jurors found for
the plaintiff at law.

The bill dismiss-
ed with costs,
deducting there-
out the arrears
of the modus.

THE COURT, on the fifth of *July* 1779, ordered the bill to be
dismissed with costs at law only; the plaintiff in equity to deduct
thereout the arrears of the pension of four pounds a-year.

HILARY TERM
19. GEO. 3.

WILLIAMS against WILLIAMS; et à Contra.

Cornwall, 28th *January* 1779.

The vicar of *St.*
Keverne, in
Cornwall, claims
the tithe of two
farms, called
Roskilly Farm
and *Groganb Farm*, in kind; particularly of hops, fruit, furze, horses, cows, sheep, sows, poultry, bees, milk, calves, colts, lambs, wool, pigs, and barren cattle.

THE vicar of *Saint Keverne*, in the county of *Cornwall*,
stated, that the defendant had, for several years past,
occupied farms in the parish, and had yearly hops, apples, pears,
plumbs, turnips, carrots, potatoes, furze which he had cut
down and sold, mares, cows, heifers, ewes, other sheep,
in kind; particularly of hops, fruit, furze, horses, cows, sheep, sows, poultry,
bees, milk, calves, colts, lambs, wool, pigs, and barren cattle.

sows,

fows, turkies, geese, ducks, hens, bees, milk, calves, colts, lambs, wool, pigs, eggs, honey, wax, a number of barren and unprofitable cattle, and several other titheable matters, the tithes of which, as well as *Easter* offerings at twopence a-head, he had refused to pay. The bill therefore prayed, that he might account for and pay *the single value* thereof.

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against
WILLIAMS;
et c. Contra.

The defendant insisted, that the following *modus*es had been immemorially paid to the vicar by the occupiers of the several ancient farms in the parish, in lieu of tithes in kind, THAT IS TO SAY, twopence for all the gardens; twopence for all eggs; one shilling for each cow; and eightpence for each calf, or white sole, or nine day's milk turned into cheese, and the cream into butter, in lieu thereof, at the election of the vicar; for him that had above three cows, one shilling for each cow, and eightpence for each calf; twopence for each colt; eightpence for each fat bullock; and eightpence for each vere cow, held by or belonging to the several occupiers of ancient farms within the limits of the parish; that the same were due and payable at *Michaelmas* in each year; that the said *modus*es had immemorially been paid to the vicar by the several occupiers of the several ancient farms, save as after mentioned. He also said, that the vicar was entitled to receive from the occupiers the tenth lamb yeaned in the parish, or the seventh in case there should be more, and the three lambs to be accounted for by the vicar the year following, and twopence for each lamb in case any of such occupiers of land therein had less than seven lambs yeaned therein; and also the tenth fleece shorn in the said parish, or the seventh fleece in case there should be no more, and the three odd fleeces to be accounted for by the vicar the year following, and twopence for each fleece of wool, in case they had less than seven sheep shorn within the limits of the said parish; and also the tenth pig farrowed; the tenth goose hatched; the tenth part of the honey made; the tenth part of the fruit in the orchard plucked or shaken down, the same to be fetched by the vicar upon notice; and the tenth part of all the corn, pease, or beans growing within the gardens in the said parish. He also said, that he was entitled to receive for *Easter offerings* twopence from each person residing within the said parish; and also the sum of sevenpence for the marriage; fivepence for the churching of women; fivepence for the burial of a man or woman; and threepence for the burial of a child. He also said, that it had been a custom in the said parish to pay the tithes of the lambs, yeaned within the parish, at the vicarage house on *Saint Mark's Day*. He also insisted, that it was the custom of the parish for such persons occupying lands therein, who thought proper to pay their tenth calf in kind to the vicar thereof, to keep such tithe calf eight weeks, in the same manner as his own rearing calves, or only five weeks

The defendant
says, that the two
farms are ancient
farms; and that certain
*modus*es are payable
in lieu of
tithes in kind of
gardens, eggs,
cows, calves,
milk, cheese,
colts, bullocks,

lambs,

wool,

pigs, honey,
geese, fruit, corn,
pease, and beans.

Easter offerings;

if

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against
WILLIAMS;
et c. Contra.

that the said *moduses* had been
established by
terriers;

that the said *moduses* had been
commuted for
money, viz 14s.
a year for *Roskelly Farm*, and
12s. a-year for
Grogorth Farm.

that he was on-
ly entitled to
fruit, pease,
beans, pigs,
geese, and honey
in kind;

and only to the
aforesaid *moduses*
for the other
tithes.

if such calf was to be fed. He further said, that as an evidence of the existence of the said *moduses*, *John Sweete*, the then vicar, and the select vestry of the parish, signed a writing, dated the twenty-fourth of *April* 1683, being an account then taken of the tithes that were due to the vicar of the said parish, to be paid in kind, according to the ancient customs aforesaid, and signed "*John Sweete*, vicar, *Robert Bogan*, and many others; that the existence of such *moduses* were respectively recognised in a *terrier* account of the houses, glebe, and tithes belonging to the vicarage in 1727, by the direction of the then *Bishop of Exeter*, which was signed by the churchwardens, the vicar, and select vestry of the parish, as in the answer was fully set forth; and he submitted, that if the plaintiff claimed a right to any other tithes than such as were specified in the aforesaid terriers, he ought to have set forth the endowment of the vicarage, to shew his right. He further said, that he had been the occupier of *Roskelly Farm*, and *Grogorth Farm* for several years past; that they had been immemorially ancient farms; that the former vicars and occupiers of the ancient farms, for their mutual convenience and advantage, had for many years since agreed to accept and pay some temporary compositions and certain yearly payments or sums of money, for and in lieu of all tithes and dues whatsoever, except *Easter offerings* arising within, or growing due, or payable for the said ancient farms respectively; and that he had paid for his said farms, fourteen shillings yearly for *Roskelly Farm*, and twelve shillings yearly for *Grogorth Farm*, except *Easter offerings*, for and in lieu of all the said vicarial tithes and dues for the same, and which had been paid and considered to be payable at *Michaelmas*; and that if the plaintiff did not chuse any longer to accept from him such temporary composition in money, he was only entitled to the tithe in kind of the fruit of orchards plucked or shaken down, of corn, pease, or beans that should grow in gardens, of lambs, wool, pigs, geese, and honey produced within the said two several ancient farms and tenements; for that for all other vicarial tithes arising in the said two farms, he had only a right to such *moduses*, as before insisted upon. He admitted, that he had not paid the vicarial tithes in kind, nor the said *moduses* from the twenty-seventh of *September* 1768, but he said that he was ready and willing and did thereby offer to pay the plaintiff his tithes according to that custom, which in 1683 was found and declared to be the ancient custom of paying tithes in the parish. He further said, that he did not know that the plaintiff, or any of his predecessors had at any time received the tithes of *Grist Mills*, excepting such *moduses* as were mentioned in the terriers, or some temporary composition in lieu of tithes for the land belonging to the *grist mills*.

The

The plaintiff replied; the defendants rejoined; and divers witnesses were examined on each side.

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against
WILLIAMS;
et c. Contra.

The defendant filed his *cross bill* stating, that from the twenty-ninth day of *September* 1769, he had occupied two ancient farms called *Roskelly Farm* and *Grogorth Farm*, in the parish of *Saint Keverne*; that by certain immemorial customs therein, the occupier of every ancient farm had paid to the vicar at *Michaelmas, old stile*, yearly, the sum of twopence for all the gardens belonging to each ancient farm, in lieu of all tithes in kind of such gardens (except the tithes in kind of corn, pease, and beans, growing therein); twopence for all the eggs produced on each of the said ancient farms, in lieu of all tithes in kind of such eggs; the sum of eightpence for each vere or barren cow or fat bullock depastured upon each of the said ancient farms, in lieu of all agistment tithe of such vere cow and fat bullock respectively; and by him that had less than four cows, the sum of one shilling for each milch cow depastured upon each of the said ancient farms, in lieu of all tithes in kind for the milk of such cows respectively; the sum of twopence for each colt foaled; the sum of eightpence for each calf calved upon each of the said ancient farms, in lieu of all tithes in kind of such colts and calves respectively; that the vicar had accepted the said *modus* accordingly; every occupier of an ancient farm, that had above three cows depastured in the parish, paid to the vicar the sum of one shilling at *Michaelmas, old stile*, yearly, or *white sole*, on the first day of *August*, old stile, yearly, at the election of the vicar, in lieu of all tithes in kind for the milk of such cows respectively; that *white sole* was nine days milk turned into cheese and the cream into butter; that he also paid the tenth lamb yeaned within the said parish, or the seventh in case there should be no more, and the three lambs to be accounted for by the vicar the year following, and twopence for each lamb, in case any of such occupiers of lands within the said parish had less than seven lambs yeaned within the said parish: AND ALSO the tenth fleece shorn within the said parish, or the seventh fleece in case there should be no more, and the three odd fleeces to be accounted for by the vicar the year following, and twopence for each fleece, in case any of the occupiers had less than seven sheep shorn with the limits of the parish: AND ALSO, the tenth pig farrowed; the tenth goose hatched; the tenth part of the honey made; the tenth part of the fruit of the orchards within the said parish plucked or shaken down, the same to be fetched away by the vicar upon notice; the tenth part of all the corn, pease, or beans growing in the gardens within the said parish: AND ALSO, for *Easter offerings*, twopence from each person residing in the parish; sevenpence for a marriage; fivepence for the churching of women; fivepence for the burial

The defendant
files a *cross bill*,
to establish the
modus

as to gardens,

eggs,

barren cattle,

milch cows,

colts,
calves,

milk,

cheese,
lambs,

wool,

Easter offerings,
churchings, and
burials.

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against
WILLIAMS;
et 2 Contra.

burial of a man or woman, and threepence for the burial of a child. The bill therefore prayed, that the *modus*es might be established.

The vicar denies
the *modus*es.

The vicar denied the existence of the said *modus*es.

The patron de-
nies the *modus*es.

The defendant *Pascoe* said, that he was the sole patron of the parish of *Saint Keverne*; that the *Bishop of Exeter* was the ordinary of the parish church; that he ought not to concur in establishing the *modus*es; and that he was an infant of the age of twelve years, whose interest he hoped the Court would carefully protect.

The bishop of the
diocese says, that
no application
had been made
to establish any
*modus*es.

The *Bishop of Exeter* admitted, that he was the ordinary of the parish church of *Saint Keverne*, and said, that no application had ever been made to him to establish or concur in establishing the several *modus*es, or pretended *modus*es set up by the defendant, but that he was ready to act in such manner, touching the establishment of the same as the Court should direct.

The causes
heard.

The depositions taken in the *original cause* were on the twenty-third of *January* ordered to be read as evidence in *the cross cause*; and upon hearing counsel for all parties for several days; and reading the several depositions; an entry in a book, intituled "an Account of the Tithes due to the Vicar of *Saint Keverne*," and dated the twenty-fourth of *April* 1683; a note and terrier of the houses, glebe, tithes, &c. belonging to the vicarage of *Saint Keverne*, dated in the year 1727, being a record in the registry of the *Bishop of Exeter*;

The cross bill
dismissed with
costs.

THE COURT ordered *the cross bill* to be dismissed with costs.

Issues directed
to try the several
*modus*es.

THE COURT also directed the following issues, to try,
" Whether there hath been, from time whereof the memory of
" man is not to the contrary, a *modus* or customary payment,
" *modus*es or customary payments, due and payable at *Mi-*
" *chaelmas* in each year, to the vicars of the aforesaid parish of
" *Saint Keverne*, for the time being, from the several occupiers
" of the several ancient farms or tenements within the said
" parish, in lieu of tithes in kind of the several species of vi-
" carial or small tithes herinafter mentioned, THAT IS TO SAY,
" twopence for all the gardens; twopence for all the eggs;
" one shilling for each cow; and eightpence for each calf, or
" white sole, or nine days milk turned into cheese, and the
" cream into butter, in lieu thereof, at the election of the
" vicar, and to be paid at the vicarage house, or on the com-
" munion table, on the first day of *August* yearly; for him
" that hath above three cows, one shilling for each cow; and
" eightpence for each calf, for him that hath less than four
" cows; twopence for each colt; eightpence for each fat bul-
" lock,

“lock, and eightpence for each vere cow, held by or belonging
 “to the several occupiers of such ancient farms within the
 “limits of the said parish.” “AND ALSO WHETHER, during
 “the time aforesaid, there hath not been due and payable to
 “the vicars of the said parish of *Saint Keverne* for the time
 “being, by the several occupiers of lands within the said parish,
 “the tenth lamb yeaned within the said parish, or the seventh
 “in case there shall be no more, and the three lambs to be
 “accounted for by the vicar the year following; and twopence
 “for each lamb in case any of such occupiers of lands within
 “the said parish hath less than seven lambs yeaned within the
 “said parish, the tithe lamb to be paid at the vicarage house on
 “*Saint Mark's Day*: AND ALSO the tenth fleece shorn within
 “the said parish, or the seventh fleece, in case there shall be
 “no more, and the three odd fleeces to be accounted for by the
 “vicar the year following, and twopence for each fleece, in
 “case any of the said occupiers hath less than seven sheep shorn
 “within the limits of the said parish; the tithe calf to be kept
 “by the occupier eight weeks, in the same manner as his own
 “rearing calves, but such tithe calf to be kept only five weeks
 “if the same be to be fed.”

WILLIAMS
 against
 WILLIAMS;
 et d. Contra.

The defendant to be plaintiff at law; the action to be tried
 by a special jury; and the judge at liberty to indorse, &c.

The issues were accordingly tried, but the jurors did not find
 one of them.

The issues not
 found.

The cause came on the eighteenth of *November 1779* for
 further directions; and upon hearing counsel for both parties;
 and reading the decree and *postea*;

THE COURT, which was full, ordered the deputy remembran-
 cer to take an account of the tithes in kind demanded by the
 bill, and to tax the plaintiff his costs, both at law and in equity;
 and that so much of the bill as prayed an account of the tithes
 which were not admitted by the defendant's answer be dismissed
 with costs.

The bill dismiss-
 ed, as to the
 tithes not admit-
 ted by the de-
 fendant; and the
 other tithes de-
 manded by the
 bill decreed.

TRAVIS against STANLEY, Bart.

Cheshire, 11th February 1779.

HILARY TERM
 19. GEO. 3.

THE vicar of *Eastham*, in *Cheshire*, claimed the tithe of hay
 and all small tithes arising in the township of *Hooton*, in the
 said parish, and prayed, that his right thereto might be esta-
 blished.

The vicar of
Eastham, in *Che-*
shire, is not en-
 titled to the tithes
 of hay arising on
 the demesne lands
 belonging to *Hoo-*
ton Hall, in the
 township of *Hoo-*

The defendants denied, that the plaintiff was by endowment,
 usage, or otherwise entitled to the tithe of hay, or to small
 tithes, in the said parish; and he is only entitled to 40s. a-year, in lieu of the small tithes, offerings, and
 oblations, of the said demesne lands. See other causes Hil. Term, 12. Geo. 3. Mich. Term, 16.
 Geo. 3. Hil. Term, 16. Geo. 3. Trin. Term, 21. Geo. 3. and 3. Rayn. 762.

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tithes

TRAVIS
against
STANLEY.

tithes in kind yearly arising within or upon *the demesne lands* of the township of *Hooton*, or any part thereof; and said, that the said demesne lands, including the hall, gardens, and buildings, contained about six hundred and eighteen acres of land; that there was a very ancient mansion house on the said *demesne lands* called *Hooton Hall*; that the said hall had been immemorially inhabited and occupied with all *the demesne lands* by the ancestors of the defendant *Stanley* and their tenants; that about eight years since a new farm house and out buildings had been erected on *the demesne lands*; that the defendant *Amery* had resided therein for several years past; that he had, for four years past, occupied all *the demesne lands*, except a few acres which were in the occupation of the defendant *Stanley*, and his tenants; that *the demesne lands* of *Hooton* now and constantly had consisted of several fields or parcels of land, usually called *the demesne lands of Hooton*; that, for several years past, certain parcels thereof had been mowed, and the hay thereof carried away without setting out the tithes; for that the defendant *Stanley* then was, and his ancestors immemorially had been entitled to the tithe of hay without making any satisfaction to the vicar for the same. They further said, that they believed that from time immemorial there had been paid and were due to the plaintiff and his predecessors, as vicars of the parish, yearly at *Easter*, or so soon after as demanded by the owners or occupiers of the hall, and *the demesne lands* of *Hooton*, forty shillings, as a *modus*, in lieu of all small tithes, offerings, and oblations in respect of the said hall and *demesne lands*; that the same had been paid to the said vicars and accepted by them successively until within a few years past; and that the defendants had been always ready to pay the same to the plaintiff.

The defendant *Stanley* said, that he was owner of *Hooton Hall*, and *the demesne lands*; that he derived the same from his ancestors who had been seised thereof, as he believed, beyond the time of legal memory; that at the time of the dissolution of the greater monasteries, the abbot of the monastery of *Chester* was seised of the rectory of *Easikam* (then called the rectory of *Sutton*), with the tithes thereof, and of divers lands and tenements within the said parish; that the same, with the other possessions of the abbot, became, on such dissolution, vested in *Henry the Eighth*; that *Henry the Eighth* granted the said rectory to the dean and chapter of *Chester* and their successors, together with all tithes yearly arising within the said parish; that one of his ancestors afterwards either purchased (when he legally might) from the persons entitled thereto, the tithes of corn, grain, and hay, arising on *the demesne lands* of *Hooton*, or in some other legal manner became entitled to the said tithes; that he and they, and his or their tenants of the said hall and *the demesne lands*, had constantly and quietly held and enjoyed the

the same, with the tithes of corn, grain, and hay arising thereon without any claim being made thereto by, or satisfaction to any former vicar for the same; and he insisted, that he, as owner of *the demesne lands*, was entitled to the tithes of hay arising thereon; and that the plaintiff had no title thereto.

TRAVIS
against
STANLEY.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and the cause came on to be heard on the twelfth day of *May* 1778; and on reading several proofs in the cause; and after several days hearing, it was ordered to stand over to a future day for the consideration of the Court; and afterwards to stand this day for the judgment of the Court, when issues were directed to try,

FIRST, “Whether the plaintiff, as vicar of the vicarage and parish church of *Eastham*, in the county of *Chester*, was endowed with the tithes of hay arising on *the demesne lands* of *Hooton*, within the said parish.”

SECONDLY, “Whether, for time whereof the memory of man is not to the contrary, there had been paid to the plaintiff, as vicar of *Eastham* aforesaid, and to his predecessors, as vicars of the said parish, yearly at *Easter*, or so soon after as demanded by the owners or occupiers of the hall and *demesne lands* of *Hooton* aforesaid, forty shillings, as a *modus* or customary payment, in lieu of all small tithes, offerings, and oblations, in respect of the said hall and *demesne lands*.”

The vicar to be plaintiff in the first issue, and the defendant *Stanley* to be plaintiff in the second issue; to be tried by a special jury or juries, and the judge to indorse any special matter on the *posse*.

The said issues were accordingly tried by a special jury.

IN THE FIRST ISSUE, the jurors found, “That the said *G. Travis*, as vicar of the parish and parish church of *Eastham*, was not endowed with the tithes of hay arising on *the demesne lands* of *Hooton*, within the said parish.”

IN THE SECOND ISSUE, the jurors found, “That the sum of forty shillings had, from time whereof the memory of man was not to the contrary, been paid by the owners or occupiers of the hall and *demesne lands* of *Hooton*, within the parish of *Eastham*, in the county of *Chester*, to the vicar of the said parish for the time being, yearly at *Easter*, or so soon after as demanded, as a *modus* or customary payment in lieu of all small tithes, offerings, and oblations, in respect of the said hall and *demesne lands*.”

The cause came on the twenty-fifth of *November* 1779 upon the equity reserved; and upon hearing counsel on both sides;

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against
STANLEY.

and reading the said decree and *poslea*; and on debate of the matter;

THE COURT ordered the bill to be dismissed, but without costs; the defendant *William Stanley* submitting to pay the arrears of the *modus* as found by the jury.

HILARY TERM
19. GEO. 3.

FYNES against ORDOYNO.

Nottinghamshire, 11th February 1779.

The vicar of *Newark upon Trent*, in *Nottinghamshire*, is entitled to all the tithes of the parish, in kind, except the tithes of corn, grain, hay, wool, and lambs, and to an annual stipend of 10l. from the rector.

THE vicar of *Newark*, in the county of *Nottingham*, claimed all tithes, except of corn, grain, hay, wool; and lambs, arising in the parish; and stated, that the defendant *Ordoyno* and others, in the year 1776, occupied divers orchards and other grounds therein, which had been converted into gardens, and had produced all sorts of fruit, plants, herbs, garden stuff, pease, beans, turnips, potatoes, onions, and carrots; that they had also growing thereon apples, pears, cherries, plumbs, and various sorts of garden fruit, as well as pease, beans, and cabbages; that they had also grown thereon osiers, saplings, and quicks; that they also had divers milch cows which had yielded milk and produced calves; that they also occupied pasture, meadow, and other lands in the parish, and had kept or agisted thereon horses, bullocks, oxen, dry cows, and other barren and unprofitable cattle, and particularly horses for the carrying of bricks and other matters not relating to husbandry; that they had also grown thereon great quantities of clover seed; that they had had growing on their said lands turnips, which were eaten by sheep not shorn within the said parish, and by which turnips they made considerable profit; that they also had kept on their said lands mares and cows which yielded them foals, calves, and milk; the tithes of all which they had refused to pay. The bill therefore prayed an account, except of the tithes of corn, grain, hay, wool, and lambs, and payment of *the single value* thereof.

The defendant *Ordoyno* said, that not only the tithes of corn, grain, hay, wool, and lambs, but all other great and small tithes arising in the said parish, belonged to and were part of the possessions of the monastery of *Saint Catherine*, without the walls of the city of *Lincoln*, at the time of the dissolution thereof by *Henry the Eighth*; that in the year 1599 or 1600, *Queen Elizabeth*, for the consideration of two thousand and twenty six pounds, six shillings, and eightpence, or thereabouts, paid into her exchequer by *H. Best* and *R. Holland*, gave and granted to them (amongst other premises) for ever, all that the rectory of *Newark*, with the appurtenances, together with a certain barn there, and also all the glebe lands, and tithes of corn, grain, hay, wool, and lambs to the said rectory of *Newark* be-
longing

longing with the appurtenances, and also all those the small tithes arising in *Newark*; that by the same grant, provision was made for the vicar of *Newark*, in lieu of small tithes, by a covenant therein contained, whereby the said *Bist* and *Holland* did for themselves, &c. covenant to pay to the vicar an annual stipend of ten pounds^(a); that by sundry conveyances, the said rectory and tithes became the property of the defendant *Sir Samuel Gordon*; that the said salary had been from time to time to the present time regularly paid to the vicar for the time being; and that for the reasons aforesaid all the tithes within the said rectory, as well great as small, belonged to the defendant *Gordon*, and not to the plaintiff.

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ORDOYNO.

The other defendants, the inhabitants of the parish, and occupiers of lands therein put in the like answer.

The defendant *Gordon* said, that he was owner and impropriator of the rectory of *Newark* aforesaid, and of the tithes, both great and small arising therein, under a grant thereof from *Queen Elizabeth*; that each and every impropriator thereof, from the time of the said grant to the present time and not the vicar, was entitled to all tithes, both great and small, arising therein; but that he could not tell what tithes in particular, besides corn, grain, hay, wool, and lambs any former impropriator might have taken thereout, but that since he had been owner of the rectory, he had besides the said tithes of corn, grain, hay, wool, and lambs, taken from several persons a composition of two shillings an acre in lieu of hay, grass, and clover; but he admitted, that the late vicar had by artful persuasions prevailed on some of the parishioners to pay him the tithes of onions and pigs, or some composition in lieu thereof; and insisted that it was an imposition upon them for that he had no right thereto.

The defendants *Stinton* and *Howard* denied, that the plaintiff was entitled to the tithes of the several titheable matters demanded by his bill, and left him to establish his right to the same, if any he had, in such manner as he should be advised.

The defendant *Stinton* said, that he was chancellor of the cathedral church of *Lincoln*, and prebendary of the prebend of *Stoake* within the said church, to which the rectory or parsonage of *Stoake* was appropriate and annexed; that the said prebend and parsonage with all the glebe lands, portions, tithes, and all other its members and appurtenances, had from time to time by his predecessors been demised to several lessees for the term of their lives, &c.; that the defendant *Howard* was lessee of the said prebend of *Stoake*; and that he never did claim or insist upon any right or title to the tithes insisted on by the bill, to

(a) See the case of *Stansfield v. Howard*, vol. 1. page 459.

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against
ORDONNO.

take the same by himself, or by any person authorised in his name, or on his behalf.

The defendant *Howard* said, that by deed, dated the sixteenth of *May* 1772 from the then chancellor to the said defendant and others, he demised to them, amongst other things, the small tithes of *Newark*, with other rights, &c. as stated in the answer.

The plaintiff replied; the defendants rejoined; and witnesses were examined on each side; and upon hearing counsel for all parties for several days; and reading an order, dated the third of *February* 1779, to prove exhibits, &c.; an entry from the register book of the archbishop of *York*, being an endowment of the vicarage of *Newark*, dated the thirtieth of *September* 1428, *temp.* KEMP.; a survey in the twenty-sixth year of *Henry the Eighth*, from the first fruits office, "*Decanatus de Newcork Newark, Vicar;*" a copy of a parliamentary survey of the impropriate rectory of *Newark*, from the *Lambeth Library*, dated the twelfth of *August* 1650; the several proofs in the cause; receipts signed *B. Wilson*, beginning the seventeenth of *December* 1723, and ending the twenty-fourth of *May* 1731; the minister's accounts of the possessions of the priory of *Saint Catherine*, relating to *Newark upon Trent* aforesaid, from the twenty-ninth to the thirtieth year of *Henry the Eighth*; a copy of a grant from *Queen Elizabeth*, of the rectory of *Newark* to *H. Best* and *R. Holland* in fee, dated the fourth of *February*, in the forty-second year of her reign; the minister's accounts in the thirtieth year of *Queen Elizabeth*, intitled, "*Newark;*" the minister's accounts of *Newark* from the thirty-sixth to the thirty-seventh of *Henry the Eighth*; a certificate as to chantries and colleges, dated the second of *July*, in the second year of *Edward the Sixth*, signed *Robert Mildmay* and *Robert Kelway*; the receiver general's accounts of the county of *Nottingham*, from the second to the third year of *Edward the Sixth*; a particular for a lease to the county of *Rutland*, dated the sixth of *July* 1593, and a warrant for such lease; the minister's accounts of the first year of *Edward the Sixth*, from the augmentation office; and upon full debate of the matter;

THE COURT ordered the deputy remembrancer to take an account of the tithes of the several titheable matters demanded by the bill, but without costs; and the plaintiff to pay to *Dr. Stinton* and *Howard* their costs, according to the course of the court.

THE COURT FULL.

WATSON

WATSON *against* HALL.*Warwickshire, 22d April 1779.*EASTER TERM
19. Geo. 3

THE plaintiff, as lessee under the hospital founded by the *Earl of Leicester* in *Warwick*, stated, that the master and brethren of the hospital of *Robert, Earl of Leicester*, in *Warwick*, for the time being, had been and still were seised in their corporate capacity in fee to them and their successors of the impropriate rectory and parsonage of *Napton on the Hill*, in the county of *Warwick*, and entitled to all the tithes of corn, grain, hay, wool, lambs, and other impropriate tithes arising therein; that they being so seised and entitled did, by their deed duly executed, and dated the twenty-eighth of *February 1761*, demise to *J. Harding*, his executors, &c. all the said rectory and tithes for twenty-one years, at one hundred and ninety pounds a year, and other rents mentioned in the lease; that *J. Harding*, by a deed, dated the sixth of *March 1762*, assigned all the said rectory, &c. to the plaintiff for the remainder of the term; and that he, the plaintiff, had thereby become entitled, amongst other things, to receive the tithes of wool which had arisen in the said parish; that the defendant had held and occupied arable, meadow, and pasture ground therein, and had kept thereon several sheep, from which he had clipped and sheared several fleeces of wool, the tithes of which the defendant had refused to pay. The bill therefore prayed payment of the single value thereof.

The governors of *Leicester Hospital*, in *Warwick*, are impropriators of the rectory of *Napton on the Hill*, in *Warwickshire*, and are entitled to the tithes of corn, grain, hay, lambs, and other impropriate tithes, particularly the tithes of wool, in kind.

The defendant said, that the hospital was seised in fee of the rectory, and entitled to receive the great tithes in kind, except the tithes of wool and the tithes of hay, which he insisted belonged to the vicar; and he stated, that by the custom of the parish tithe in kind had been always taken of the wool that had been shorn therein from sheep that had been kept therein, upon or before *Lady Day, old stile*, next immediately preceding the shearing time of the said sheep; and that no tithe in kind had been taken of wool shorn therein from sheep that were not kept therein upon or before *Lady Day, old stile*, next immediately preceding the shearing of the said sheep; but that in lieu thereof, one halfpenny for every such sheep had always been paid, excepting the instances set forth; that the original principal reason of this custom had arisen from the impropriators having double commons, that is to say, a right to put twice the number of horses, cows, and sheep, upon the commons and commonable places in the parish, in respect to his glebe land, that might be put on them in respect to any other equal quantity of land lying therein that was not glebe; that the glebe land had then a double benefit of the commons, which the old people said had been allowed in consideration of a halfpenny an head for sheep bought in and brought into the parish between *Lady Day, old stile*, and *shearing time*, in lieu of tithes in kind of wool

WATSON
against
HALL.

wool arising from sheep so brought in ; that another reason for the said custom had been, because the owners of many of the sheep brought into the parish between *Lady Day*, *old stile*, and *shearing time*, paid tithe to the impropriator, rectors, or vicars of the parishes from whence such sheep had been removed, in respect of their being kept in such parishes for the winter and spring before such removal.

The plaintiff replied ; the defendant rejoined ; and witnesses were examined on both sides ; and upon hearing counsel for the plaintiff ; and upon reading an affidavit of the service of *sub-pœna* to hear judgment on the defendant, &c.

THE COURT ordered the deputy remembrancer to take an account of the tithes of all wool which the defendant had in the parish from *Lady Day* 1775, until the feast of *Saint Michael* 1776; and the defendant to pay what should be found due upon such account together with costs, unless he shewed cause to the contrary ; and no cause being shewn, the said decree was, on the seventh of *June* 1779, made absolute. The deputy made his report, dated the twenty-eighth of *June* ; and on the first of *July* the report was confirmed with subsequent costs, and the defendant ordered to pay one hundred and twelve pounds, six shillings, reported due, with subsequent costs, *viz.* one pound, sixteen shillings, and sixpence for the tithes of the wool, and for taxed costs one hundred and ten pounds, nine shillings, and sixpence.

THE COURT FULL.

EASTER TERM
19. GEO. 3.

CARTWRIGHT against COLTON.

Lincolnshire, 29th April 1779.

The rector of *North Searle*, in *Lincolnshire*, claims the tithes of those inclosed lands which were formerly common fields called *East Field*, *North Field*, and *South Field*.

The defendant says, that the rectory is appurtenant to the manor, and that upon inclosing the common fields it was agreed between the patron, the rector, the copyholders, and the ordinary, that the benefice should be augmented by certain allotments of lands, and that the other lands should pay 1s. an acre, in lieu of tithes.

THE rector of *North Searle*, in the county of *Lincoln*, claimed the tithes of wheat, rye, barley, oats, pease, beans, hay, clover, turnips, sheep, lambs, and wool, which had arisen on the defendant's farm since the fifth of *April* 1777.

The defendant admitted, that he had occupied the farm from the beginning of the year 1777 until *Lady Day* 1779 ; and said, that he then quitted the possession thereof. He further said, that the rectory of *North Searle* was appendant to the manor of *North Searle* ; that the lord of the manor was the patron of the rectory and parish church ; that the lords thereof had for a number of years been part owners of the rectory ; that there were within the manor and parish about one hundred years ago divers open and common fields, commonable lands, and waste grounds ; that by reason of the uncultivated state of such lands

before

before that time, the rectory was of the small annual value of twenty pounds; that the then lords of the manor, the rector, and all the copyholders and owners of lands therein, at different times entered into several agreements for inclosing *East Field*, *North Field*, and *South Field*, being part of the aforesaid lands, and which agreements he stated in his answer; that by the said agreements the rectory was much increased in value by the apportionments, payments, and allotments for that purpose; that the said agreements were established by a decree in chancery, in a cause in *Hilary Term 1727, Wilson v. Cartwright*; that the farm he occupied consisted of five closes of pasture land taken and inclosed as aforesaid out of the common, moor, and waste grounds within the said manor, and of a messuage, orchard, and several closes of arable and meadow land, and insisted the whole were part of the said three common fields; that no further or other satisfaction than a yearly payment after the rate of one shilling an acre was due or payable to the plaintiff, in respect of the tithes of such lands, except as to the first mentioned five closes of pasture land; that the said five acres were tithe free, and consequently not subject to such yearly payment; and he set forth an account of the several titheable matters he had on his said lands in the said years, and the value of the tithes thereof; and said that he was willing to pay after the rate of one shilling an acre, but that the plaintiff had refused to accept thereof; and he claimed the same benefit of the agreement, the consent of the ordinary, and the decree, as if he had pleaded the same.

CARTWRIGHT
against
COLTON.

The plaintiff replied; the defendant rejoined; and witnesses were examined only on the part of the defendant; and upon hearing counsel on both sides; and on full debate;

The cause
heard.

THE COURT ordered the deputy remembrancer to take an account of what was due for the tithes demanded by the bill, but without any costs.

The tithes de-
manded by the
bill decreed; but
without costs.

WILSON against MARTON.

Yorkshire, 29th April 1779.

EASTER TERM
19. Geo. 3.

THE rector of *Slaidburn*, in the county of *York*, claimed of common right, as rector and incumbent, all the tithes of corn, grain, hay, and other tithes whatsoever yearly arising therein, particularly the tithes of wheat, barley, oats, and other grain on a farm in the defendant's occupation in the township of *Essington*, in the said parish; and prayed, that his right hereto might be established.

The rector of
Slaidburn, in
Yorkshire, is en-
titled to the tithes
of wheat, bar-
ley, oats, and o-
ther grain arising
on *Rainill Farm*,
in the township
of *Essington*, in the
said parish, in
kind.

The defendant admitted, that the plaintiff was rector; and said, that he, the defendant, had been, for nine years past, occupier of an ancient messuage or farm, situate part in the parish
of

WILSON
against
MARTON.

of *Slaidburn*, and part in the township of *Effington*, in the said parish; that in the year 1775 he had several acres of land sown with corn, which he cut and carried away without setting out the tithes thereof, or making any satisfaction for the same to the plaintiff; for that he never did set out any tithes of any titheable matters and things arising on the said lands lying within the said township, as they were exempt from the payment of tithes, either as belonging heretofore to some religious house which before the dissolution thereof held the same discharged of tithes, or by some other good cause of exemption; and he set forth the quantity; and said, that he had applied to the plaintiff to accept the value of his tithes, together with his costs, for the said years, but that he had refused to accept the same without having a decree made by this Court, unless the defendant's landlord would enter into some agreement, thereby charging and making liable the said lands and farm with the payment of tithes of corn and grain for ever thereafter. He further said, that as three acres, part of the said land so sown with corn, was the property of the college at *Manchester*, and part of a farm called *Raingill*, which paid a *modus* for tithe corn to the said rector, he therefore submitted how far he was accountable or ought to pay his tithes to the plaintiff, as the tithe farmer had been farmer of all the tithes of corn and grain in the said parish, and was entitled to all the tithes that had been due from the defendant's farm ever since he occupied the same.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and upon hearing counsel for the said parties;

THE COURT ordered the deputy remembrancer to take an account of what was due for the several titheable matters demanded by his bill, with costs.

THE COURT FULL.

EASTER TERM
19. GEO. 3.

BROADLEY against BROCKLEBANK.

Yorkshire, 7th May 1779.

The plaintiff claims the tithes of corn, grain, hay, and potatoes in the township of *Tranby*, *Anlaby*, and *Walfreton*, in the parish of *Elvelley*, in *Yorkshire*.

THE plaintiff stated, that he had, for thirty-six years past, been entitled to all the tithes of corn, grain, hay, and potatoes, in kind, arising in *Tranby*, *Anlaby*, and *Walfreton*, in the parish of *Elvelley* or *Kirk Elly*, in the county of *York*, and the titheable places thereof, formerly part of the possessions of the *Priory of Haltonprice*; that the defendants *Brocklebank* and *Bilton*, inhabitants and occupiers of several lands in *Tranby*, had, in 1776, planted large quantities of potatoes in the open fields, and dug them up and carried them away, without setting out the tithe thereof. He therefore prayed an account and payment of the same.

The defendant, the vicar, denied, that the plaintiff was rightful impropiator or rector of the parish, or that he was entitled to the tithes demanded by the bill. He said, that he believed he had purchased some portion of *the great tithes* of the parish; but could not tell what right he had so purchased; that much the larger part belonged to the heiresses of *R. Ellerker*, deceased; that the said co-heiresses were rectors and patrons of the vicarage; that the plaintiff was not entitled to the tithe of potatoes or any other small tithes arising in that parish; but that he, as vicar thereof, was entitled thereto; that he had been vicar of the parish forty-two years, and was presented thereto by *E. Bradshaw*, deceased; that he and predecessors had always received the small tithes within the rectory, or a satisfaction for the same, and in particular the tithes of potatoes; but that he had never seen the original endowment of the vicarage, nor did he know where to find the same.

BROADLEY
against
BROCKLE-
BANK.

The vicar says, that the plaintiff is neither impropiator nor rector of the parish, and that he as vicar is entitled to the tithes of potatoes.

The defendants *Brocklebank* and *Bilton* also denied, that the plaintiff was impropiator or rector of the parish, or that he was entitled to the tithes of potatoes; and said, that they had heard that he had purchased some portion of tithes, but what portion they could not say; they admitted, that they were occupiers of lands in *Tranby*; and that they had planted potatoes in the open fields, and had dug them up and carried them away, after setting out the tithes to the vicar.

The occupiers deny the plaintiff's right to the tithes demanded by the bill.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and upon hearing counsel for all parties; and upon reading on behalf of the plaintiff a book from the registry of the archbishop of *York*; an endowment, dated the third of *May* 1344, read from the aforesaid book, intitled "*Ordinatis Vicaria de Elveley*"; another book from the said registry; and entry of *Nova Ordinatis Vicaria de Elveley*, dated the twenty-third of *October* 1438; the depositions of several witnesses; and on full debate had thereon;

The cause heard.

THE COURT ordered the bill to be dismissed, but without costs.

The bill dismissed without costs.

BROOKE against POWER.

Middlesex, 11th May 1779.

HILARY TERM
19. GEO. 3.

THE rector of *Fryern Barnett*, in the county of *Middlesex*, claimed the tithes of corn, grain, hay, wool, lambs, agistment of dry, barren, and unprofitable cattle, *Easter* offerings, oblations, and other ecclesiastical dues, belonging to the rectory; and stated, that the defendant *Power*, being indebted to him for one years tithe of a farm then in his occupation, accounted with and paid him ten pounds, ten shillings, in lieu thereof

The rector of *Fryern Barnett* claims the tithes of the parish in kind.

BROOKE
against
POWER.

thereof to *Michaelmas* 1773; that soon after *Michaelmas* 1773, he let part of the farm to the defendant *Durell*; that *Power* about the same time took into possession other lands, and continued in possession of the premises, and of a dwelling house, garden, orchard, and other appurtenances in the parish; that he had mowed therefrom a quantity of grass, and made the same into hay, and had divers other titheable matters; that in 1775, he let the other part of the farm to the defendant *Devon*; that neither he nor *Durell* had paid the tithes arising therefrom; that *Power*, about the latter end of 1774, quitted the possession of the dwelling house, garden, and orchard, but continued in the occupation of the residue of the farm; that for four years past the defendant *Durell* held and occupied the aforesaid farm and lands, and also a dwelling house therein; and that after the defendant *Power* had quitted the said messuage and dwelling house first mentioned, he let the same to the defendant *Devon*, who had ever since held and enjoyed the same; that the defendants, during such their several occupations, had growing, &c. on the said lands, large quantities of hay, and had kept and fed thereon ducks, geese, hens, chickens, and other poultry, which produced eggs; that they had several large orchards and gardens from which they gathered apples, pears, and other fruit, as also potatoes, carrots, cabbages, and other garden stuff, and had divers other titheable matters and things therefrom; that they had fed and depastured thereon barren and unprofitable cattle; and had yearly in their houses several communicants, and that there became due to the plaintiff several *Easter offerings* in respect thereof; the tithes or tenths of all which said titheable matters ought to have been paid, but that they had wholly substracted such tithes, and converted the same to their own use without making him any satisfaction for the same, and had refused to set out such tithes under some pretence that he was not entitled thereto. He charged, that the defendants had, in manner before-mentioned, shifted and changed their said lands from one to the other, whereby it was impossible for him to discover what part in particular of the said lands and grounds each of them had, during the times aforesaid, been in possession of, without a discovery from them; and submitted, that the defendants, in whose occupation the lands were, ought to have set out and rendered the same to the plaintiff in kind, and ought now to account with him for such tithes. The bill therefore prayed, that the defendants might answer the premises, and account for the several matters so substracted and withheld from the plaintiff since *Michaelmas* 1773. and that they might be decreed to pay to him what should appear due on such account.

The

The defendants admitted, that the plaintiff was parson and minister of the parish; that the parish might be a rectory; that the rector was entitled to tithes, both great and small, arising therein in kind, and to such agistment tithe, *Easier offerings*, oblations, and other ecclesiastical dues, as were demanded by the bill.

BROOKE
against
POWER.

The defendants admit that the plaintiff was rector of the parish.

The defendant *Power* said, that in the years 1772 and 1773, he occupied thirty-eight acres of land in *Fryern Barnett*; that in the late incumbent's time he paid two shillings in the pound, as a composition in lieu of great and small tithes; that such composition had been taken by him throughout the parish during fifty years, the whole time he had held the living; that the plaintiff himself had received the same up to *Michaelmas* 1772; that about the third of *January* 1773, he sent the defendant the following notice in writing: "I hereby give you notice, that I shall not for the future accept of the like money paid by you to me for and in lieu of tithes arising from off your lands and grounds situate in the parish of *Fryern Barnett*, in the county of *Middlesex*, for the year 1773, but that I intend to gather and collect in kind all and singular the great and small tithes which I now am or may be entitled to as rector of the said parish, which shall hereafter arise and become due to me from off your said lands and grounds, or otherwise howsoever, within the said parish of *Fryern Barnett*, and I do expect you for the future to set out and sever the same as required by law. DATED the eleventh day of *December* 1772, S. BROOKE, rector of the said parish;" that in *June* 1773, he, the defendant, mowed a field of grass, and put the produce thereof into grass cocks, and gave the plaintiff notice that he was ready to set out the tithes thereof; that the plaintiff thereupon attended with two men, and desired to know whether such grass had been redden abroad and raked in before it was cocked; that on being informed it had not, but that the same was cocked out of the swarth, he refused to take it in that way; that he, the defendant being informed by some of the oldest inhabitants in the parish that such had been the custom, he refused to set out the tithes thereof in any other manner. He further said, that the plaintiff had entered into an agreement with some of the parishioners to receive four shillings an acre yearly as a composition in lieu of such tithes; that he had paid the like in the year 1773, as would appear by the following receipt: "Received the nineteenth of *October* 1773 of *Mr. Power* nine pounds, fourteen shillings, in full for one year's tithes and a pew in the church, due at *Saint Michael* last, S. BROOKE; tithes seven pounds, twelve shillings, for thirty-eight acres; pew, two pounds, two shillings, in the whole nine pounds, fourteen shillings." He further said, that he let part of his lands to the other defendants, as stated in the answer; and he insisted, that

The defendant *Power* says, that he paid a composition for all his tithes to *Michaelmas* 1773; that on the third of *January* 1773 he received notice to pay his tithe in kind.

Notice

that in *June* 1773 he set out his tithe hay in cock from the swarth; that the plaintiff refused to receive it because it had not been redden abroad and raked in;

that the plaintiff had agreed with some parishioners to compound at 4s. an acre for 1773; and that he had paid him the same as per receipt;

BROOKS
against
POWER.

that the agreement was binding.

The other defendants admitted, that they had tithable matters.

that the agreement was binding on the plaintiff, and that he was ready to perform the same on his part ; and he offered to pay all such sums as were due to him for the said composition.

All the defendants admitted, that during the time they had so occupied the said lands, they had several quantities of hay ; that they had kept and fed thereon poultry of different kinds ; that they had gathered fruit and garden stuff therefrom ; that they had depastured thereon several barren and unprofitable cattle ; that they had communicants in their family, in respect of whom the plaintiff might be entitled to *Easter offerings*, but that he had never claimed of them either the tithes or *Easter offerings*.

The tenants of the defendant *Power* say they did not set out their tithes.

The cause heard.

The defendants *Durell* and *Devon* said, that they believed, for the reasons aforesaid, that they were not obliged to set out or pay tithes in kind, during the time they occupied the lands.

The plaintiff replied ; the defendant rejoined ; and divers witnesses were examined on both sides ; and upon hearing counsel for all the parties ; and reading the depositions of several witnesses ; and a note from the plaintiff to the defendant *Power*, dated the fourteenth of *September* 1778, with a note of tithes inclosed therein ;

The tithes in kind decreed.

THE COURT ordered the defendants to account for the several tithes and other matters demanded by the bill, but without costs ; and on the twenty-fifth of *July* 1783, the deputy's report, dated the fifth of *June*, was confirmed, but without costs on either side.

SKYNNER, *Chief Baron.*
KYRE, *Baron.*
PERRY, *Baron.*

TRIN. TERM,
19. GEO. 3.

CALMELL *against* GIFFARD.

Staffordshire, 9th June 1779.

The lessee of the dean and chapter of *Litchfield* and prebendary of *Brewood*, claims all tithes, both great and small, arising in the parish of *Brewood*, in *Staffordshire*, excepting only the tithes of corn and grain arising in the township of *Chillington*, and upon the demesne lands of *Bentley Hall*, in the said township.

THE bill stated, that by virtue of one or more lease or leases duly executed by the dean of the cathedral of *Litchfield*, and prebendary of the prebend of *Brewood*, founded in the said cathedral, the plaintiff, for many years last past, had been and then was entitled for his life to all the said prebend and parsonage of *Brewood*, with the appurtenances, and to all manner of tithes, oblations, and obventions whatsoever, being part of the said prebend or parsonage arising in the said parish of *Brewood*, except the tithes of corn and hay within the township of *Chillington*,

Chillington,

lington, and such tithes as arose upon the demesne lands of *John Lone*, of *Bentley*, in *Chillington*; that the defendant *Giffard* and others had respectively occupied land in *Brewood*, and had had cows which yielded calves and milk; that they had several acres of turnips; that they had cut and taken away divers quantities of underwood and coppice wood; that they had agisted upon the lands (not lying within the township of *Chillington*) several barren cattle for hire; that they had sows which had pigs, and also geese, ducks, hens, and other poultry, which had severally produced goslings, ducklings, chickens, and eggs; that they had mowed and taken from lands (not within *Chillington*) great quantities of hay; that they also had divers ewes and other sheep, which had yielded lambs and wool, and had also had other titheable matters, all which they had taken away respectively (besides corn), and had refused to pay the tithes thereof. The bill then charged, that the defendant *Muchall* was not entitled to any of the said tithes, nor to any small tithes arising upon the lands occupied by the other defendants, for that the vicarage of *Brewood* was not endowed with any of the said titheable matters, nor had the vicar ever received the same, but that they had been constantly paid to the dean and prebendary aforesaid, or to their lessee. The bill also charged, that there was no *modus* in lieu of the tithes of hay; and that the tithes of corn, grain, and hay arising upon the defendant's lands were payable in kind to the said dean and prebendary or their lessee. The bill therefore prayed, that the plaintiff's right, under the said lease or leases, might be established against *Muchall* as vicar of the parish; and that *Giffard* and others might be compelled to account for the single value of the tithes they had not paid for, and pay the same.

CALMELL
against
GIFFARD.

The defendant *Giffard* and others admitted, that the plaintiff was beneficially entitled to the prebend and parsonage of *Brewood*, and also to all such tithes, oblations, and obventions as were parcel of the said parsonage; but they denied, that he was entitled to all and all manner of tithes arising in the said parish; for that by an ancient endowment and survey of the said prebend and parsonage, taken in or about the year 1649, it was found that the vicar was entitled to all or the greater part of the small tithes arising therein, and had received a pecuniary composition or other satisfaction for the said tithes, which was the reason that the same had never been paid to him in kind.

The defendant *Giffard* says, that the vicar of *Brewood* is entitled to the small tithes thereof;

The defendant *Giffard* said, that he had for several years past occupied divers quantities of land in the parish; that he had kept and fed thereon cows which had calves and milk; that he had sown and gathered several acres of turnips; that he had not cut or taken away any underwood or coppice wood for sale or otherwise than for firewood to be used in his house, and for the use of his farm and demesne lands, or for repairing the roads and such like; that he had agisted for hire divers barren and unprofitable cattle; that he had several sows, pigs, geese, ducks, hens, and other poultry; but he denied, that the plaintiff was entitled

that he had cut no wood except for fuel and husbandry;

to

CALMELL
against
GIFFARD.

that his barren cattle had been fed in *Chillington*; and that he being the lessee of the tithes of corn and hay in *Chillington*, was there- by exempted from agistment tithes; that he paid the vicars 20s. a-year in lieu of small tithes; that the plaintiff is only entitled to the tithes of wool and lambs, which he had paid.

The defendant *Ward* said that he occupied *Black Ladies Farm*; that no great tithes were payable for the same;

that there was a real composition as to tithe hay, wool, and lambs;

that he paid 15s. yearly to the vicar in lieu of *Easter* dues and all small tithes.

to the tithes thereof; for that no tithe of underwood had ever been demanded till then; that the same was either not due, or if due was payable to the vicar and comprized in the composition; that as to the agistment tithe, the whole or the greater part of the cattle so fed and depastured had been depastured upon lands in the township of *Chillington*; that the tithes of corn and hay growing upon the said lands had been conveyed to him, the defendant, by a lease from the dean and chapter of *Litchfield*; and that under such lease he, the defendant, ought to be exempted from the payment of such agistment tithe; that, as to the other species of tithes, he had from time to time paid the vicar at *Easter* yearly one pound, in lieu of the same and all other small tithes, except the tithes of wool and lambs; and that he had regularly paid the said tithes of wool and lambs to the plaintiff, or to those under whom he claimed.

to the tithes of wool and lambs, which he had paid.

The defendant *Ward* said, that he had for five years past occupied *Black Ladies Farm*(a); that he had from time to time mowed and taken away hay therefrom; that he had fed cows thereon which had yielded milk and calves; that he had had sheep which yielded lambs and wool; and that he had sown and gathered some turnips; that he had no underwood, except the cutting and plashing of his hedges; that he had agisted several barren cattle, and had had several sows, pigs, geese, ducks, hens, and other poultry; and that he had paid hitherto all such tithes, except the tithes of hay, wool, and lambs; that the said farm, called *Black Ladies Farm*, formerly belonged to a convent called *the Black Nuns*; that an ancient composition had taken place between *the Black Nuns* and the vicar of *Brewood*, respecting the tithe of wool and lambs; that by an ancient survey taken of *Black Ladies Farm* by the commissioners in the year 1652, it appeared that the same was tithe free(b); and that he and the other occupiers thereof had paid the tithe of corn in their own wrong; that the plaintiff was not entitled to the said tithes; that, in respect to the tithes of underwood, the plaintiff had never demanded the same, and therefore it was either not due, or if

(a) See *Wightwick v Gifford*, Mich. Term 1683, vol. 1. page 221.

(b) A case of *Wightwick v. Giffard* came before the Court on the twenty-eighth of February 1691. The plaintiff, as lessee of the dean and chapter, claimed the tithes of *Black Ladies Farm*. The defendant insisted, that it was free from tithes, as having been formerly parcel of some religious house; and that if it was not, it was not situated in the parish of *Brewood*. On the hearing, a decree, dated the seventeenth of July

1. Jac. 2. in the court of exchequer, between the same parties, was read, by which it appeared, that there had been two verdicts for the plaintiff's testator upon an issue directed, whether *Black Ladies Farm* was in the parish of *Brewood*, and both verdicts found, that it was in the said parish. THE COURT therefore decreed, that the defendant should pay the plaintiff the value of the said lands; and on the twentieth of July 1698, the deputy's report thereon was confirmed.

due;

due, was payable to the vicar, and comprized in the composition of fifteen shillings yearly paid from time to time, in the name of *Easter dues*, and in lieu of the same and of all small tithes.

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against
GIFFARD.

The defendants *Pitt* and *Boodle* said, that they had for several years past occupied lands in the said parish, and from time to time had mown and taken away several quantities of hay; that they had kept cows thereon which had yielded milk and calves; that they also had ewes and other sheep from which they had lambs; that they had sown and gathered several acres of turnips; that they had not cut any underwood, except from hedges; that they had agisted barren cattle; that they had several sows; and that the plaintiff was not entitled to any of the said tithes, except the tithes of hay, wool, and lambs; that with respect to the tithes of underwood, it had never been demanded, and therefore was either not due, or if due was payable to the vicar and comprized in the composition of seven shillings yearly paid at *Easter*, viz. four shillings by the defendant *Pitt*, and three shillings by the defendant *Boodle*, in lieu of all small tithes, except the tithes of hay, wool, and lambs.

The defendants *Pitt* and *Boodle* insisted, that the plaintiff was only entitled to the tithes of hay, wool, and lambs;

that they paid 15s. a-year to the vicar in lieu of *Easter dues* and all other small tithes.

The defendant *Tomkinson* said, that he occupied lands in the parish, and, setting forth the titheable matters he had had thereon, said that he had paid to the vicar at *Easter* yearly four shillings, in lieu and satisfaction of the aforesaid small tithes, except the tithes of hay, wool, and lambs.

The defendant *Tomkinson* said he paid 4s. yearly, in lieu of all small tithes, except hay, wool, and lambs.

All the defendants denied, that they or any of them had subtracted any tithes to which the plaintiff was entitled; and insisted, that they had respectively paid the yearly sums before-mentioned, as a composition for the several species of tithes demanded by the bill, except as aforesaid, and they submitted, that the right to the tithes so demanded ought to be litigated between him and *Muball*, who also claimed the same as vicar.

The defendants deny the plaintiff's right.

The defendant *Sherratt* admitted the lease to the plaintiff, as stated in the bill, but insisted, that he was not entitled, in the manner therein stated, to all tithes arising in the parish, for that by some ancient endowment the vicar was entitled to all or the greater part of the small tithes, and had received a pecuniary composition in lieu thereof; and setting forth the land he held and titheable matters he had thereon, said, that he had paid the plaintiff all the tithes of corn, wool, and lambs; but he further said, that he had not paid any tithe of hay in kind, for that a *modus* of one shilling a-year had been immemorially payable and paid to the dean of *Litchfield* and prebendary of *Brewwood*, or their lessee, in lieu of tithe hay, as well clover as other hay yearly arising upon all or any part of the lands in his occupation, and which he held of *Robert Barber*. He also insisted

The defendant *Sherratt* says, that he paid the plaintiff the tithes of wool and lambs; and that there is a *modus* of 1s. a-year for the tithe hay arising on *Barber's Land*, and the same for *Craven's Land*;

CALMELL
against
GIFFARD.

and that he paid
5s. a-year, in lieu
of *Easter dues*
and other small
tithes.

The vicar insists,
that he is enti-
tled to all the
small tithes in the
parish of Bre-
wood.

except the tithes
of corn, grain,
hay, wool, and
lambs ;

and states the e-
vidence to shew
his right thereto.

on the like *modus* of one shilling for the hay grown on *Craven's Land*, and said, that no tithes of hay had ever been demanded in kind, except by the plaintiff, for the said lands; but on the contrary that he had annually accepted and received the said two several *moduses*, in satisfaction thereof, down to the year 1775. He further said, that he had paid to the vicar at *Easter* the yearly sum of five shillings, in the name of *Easter dues*, and in lieu of all small tithes, except the tithe of hay as aforesaid, and except the tithes of wool and lambs. He denied, that he had substracted any tithes to which the plaintiff was entitled, and said, that the tithes demanded by the bill ought to be litigated between him and the vicar,

The defendant *Muhall* said, that the dean of the cathedral church of *Litchfield* was also prebendary of the prebend of *Brewwood*, founded in the cathedral church and annexed to the said deanery; that he was, in right thereof, entitled to a house called *Dean's Hall*, and certain *demefne lands*, farms, and the great tithes of the parish of *Brewwood*; that the plaintiff, by lease, dated the seventeenth of *February* 1770, became entitled, not only to the house and the *demefne lands*, but to all such tithes and profits, as the dean had a power to demise, except as therein may be excepted; that the dean was only entitled to the tithes of corn, grain, hay, wool, and lambs; and that the vicars of the said parish were entitled to all the *small tithes* therein, or to some composition for the same (a). He then stated, that amongst the records of the dean of *Litchfield*, there was an ancient book which contained an entry of the endowment of the vicarage, dated in the month of *April* 1275, which he set forth in his answer; that neither the present nor any former dean of *Litchfield*, nor any of his or their tenants had ever since the said endowment, claimed or enjoyed any of the small tithes or other profits than claimed by the plaintiff; that the said dean had presented him to the vicarage in 1768; that from that time he had been contented with the usual income, though the whole certain income for small tithes, exclusive of surplus fees, had amounted yearly only to about sixty-five pounds; that in an ancient survey made of the said parish in 1649, and then remaining in the registry of the dean of *Litchfield*, there was the following entry: "There is a little vicarage house in *Brewwood*, with a small " back side; there is no glebe land belonging to the vicarage,

(a) On the twenty-second of *February* 1728, *Hilary Term*, the second year of *George the Second*, the case of *Moss v. Plymley* came before the court of exchequer. The plaintiff, as vicar of *Brewwood*, filed his bill to recover the tithes of flax and other small tithes which had arisen on *Hatten's Farm*. The defend-

ant insisted, that a *modus* of seven shillings and sixpence a-year had been immemorially payable to the vicar in lieu of all small tithes arising on the said farm, and which *modus* he averred he had duly paid. THE COURT, on hearing the cause, dismissed the bill with costs.

" except

“ except the church yard ; the vicar hath *the small tithes* and
 “ *Easter Book*, which is worth, *communibus annis*, twenty pounds.”
 He said, that his predecessor had seldom collected the small
 tithes in kind, but had accepted money in lieu thereof ; and that
 he had received such sums as were mentioned in the bill, until
 the commencement of this suit, since which the usual payments
 for small tithes had been withheld from him ; but he admitted,
 that the plaintiff had taken the tithes of wool and lambs. He
 further said, that the books of accounts of former vicars
 confirmed his right to the small tithes then claimed by the
 plaintiff, although the title of such accounts might be “ *Easter*
 “ *dues*,” and that he had not discovered any other written evi-
 dence in support of his right to the tithes in question.

CALMELL
 against
 GIFFARD.

The plaintiff replied to the answers of the defendants *Sher-*
ratt, Boodle, Tomkinson, and Muball ; and they rejoined ; and
 witnesses were examined, as well on the part of the plaintiff, as
 on the part of the defendants *Sherratt and Muchall* ; and upon
 hearing counsel for all parties ; and reading the evidence on be-
 half of the defendant *Muball*, viz. the depositions of several
 witnesses ; a paper from the registry of the dean and chapter of
Litchfield, intitled “ A Survey of the Prebend, Parsonage, and
 “ Manor of *Brewood*, in the County of *Stafford*, taken the
 “ twelfth day of *March* 1649 ;” entries, viz. “ the tithes sheaf,
 “ and hay, wool, and lamb arising in the said parish of *Bre-*
 “ *wood* ;” another entry, “ there is a little vicarage house but no
 “ glebe, except the church yard ; the vicar has the small tithes ;
 “ an *Easter* book worth twenty pounds *per annum* ; vicar *Daw-*
 “ *man* hath *Chillington*, and the whole rent of *Brewood* for aug-
 “ mentation ;” a receipt, dated the third of *January* 1667,
 from *Rowland Cooke*, for two shillings and eightpence, for her-
 bage due to *Mr. Emery*, vicar of *Brewood*, for land late *Thurs-*
ton's ; several depositions taken on the behalf of the other de-
 fendants ; a receipt, signed “ *Thomas Careless*” for twenty-one
 pounds, for a years tithe due to *Peter Calmell*, dated the twen-
 ty-sixth of *December* 1772 ; and on full consideration had
 thereon ;

The cause
 heard.

THE COURT ordered the bill to be dismissed as against *H.*
Sherratt, T. Boodle, and T. Muball, with costs ; and declared,
 that the ground of dismissing the bill as against *Sherratt* was, that
 the tithes of the said defendant's lands were in lease from the
 plaintiff to the said defendant, at the time of filing the plaintiff's
 bill.

The bill dismiss-
 ed, as to *Sher-*
ratt, Boodle, and
Muball, because
 as to *Sherratt*,
 the plaintiff had
 leased his tithes
 when the bill
 was filed.

THE COURT further ordered the bill to be dismissed, as against
Richard Tomkinson, except as to tithe hay, with costs.

The bill dismiss-
 ed, against *Tom-*
kinson, except as
 to tithe hay ;

CALMELL

against

GIFFARD.

and an account
ordered to be
taken of the
tithe hay he
had subtracted.

THE COURT further ordered the deputy remembrancer to take an account (but at the plaintiff's peril of costs) of what was due from *Tomkinson* for the tithe hay which had been subtracted upon his said farm and lands within the said parish of *Brewood*: subsequent costs and further directions to be reserved till after the report.

TRIN. TERM,
19. GEO. 3.

ROBINSON against BARROBY.

Yorkshire, 10th June 1779.

The owners of the tithes of corn and hay arising in the township of *Disforth*, in the parish of *Topcliffe*, in the county of *York*, are entitled to have the tithes of hay set out in large hay cocks; the tithes of oats in stooks of ten or twelve sheaves; the tithes of barley in stooks of five or six sheaves; the tithes of pease and beans in stooks of three or four sheaves, at the option of the occupier.

THE bill stated, that the plaintiff *Robinson* had been, for several years past, seised in fee of one undivided moiety of the tithes of corn, hay, and clover, yearly arising in the township of *Disforth*, in the parish of *Topcliffe*, in the county of *York*; that the plaintiffs *Rainforth* and *Groves* had, for several years past, rented the same of him; that the plaintiff *Gurnell* had been, for several years past, seised in fee of one undivided fourth part of the said tithes; that the plaintiff *John Morley* then rented the same; that the plaintiff *William Morley* was seised in fee of the remaining undivided fourth part of the said tithes; and that the said *J. Morley* rented the same; that the plaintiffs or their tenants were entitled to have such tithes set out in the proportions aforesaid in kind, according to the following custom of the township: FIRST, "That every occupier of land having grass in the township of *Disforth* shall cut and take the nine parts from the tenth part thereof, and leave such tenth part when it is dry and fit to be made into a hay-cock, upon the field where it was cut, for the owner of the tithe." SECONDLY, "That each occupier of land, having wheat corn, messin corn, rye corn, and oats in the said township, had constantly made the said corn and oats into stooks, containing ten or twelve sheaves to a stook; and that the tenth of each such stook had always been set out and left, as the tithe of such corn and oats, for the owner thereof." THIRDLY, "That each occupier of lands, having barley in the said township, had constantly made the said barley into stooks, containing five or six sheaves to a stook; and that the tenth stook had always been set out and left, as the tithe of such barley, for the owner thereof." FOURTHLY, "That each occupier of land, having pease and beans in the said township, had constantly made the said pease and beans into stooks, containing three or four sheaves to a stook; and that the tenth stook had always been set out and left, as the tithe of such pease and beans, for the owner thereof." And FIFTHLY, "That the number of sheaves to be put in a stook was in the discretion of the occupiers." The bill then stated, that the defendants had respectively, from the beginning of the year

1777,

ROBINSON
against
BARNOL.

1777, occupied several farms in the township ; that they had had thereon hay grafs, clover grafs, and other grafs, which they had made into hay ; that they had also had several quantities of corn, wheat, oats, barley, pease, and beans ; that the plaintiffs were entitled to have had the same made into corn stooks and hay cocks, and the tithe thereof set out according to the said customs ; that they had given proper notice to the defendants so to do, but that they had refused to set out the same accordingly, or to make them any recompence for the same. The bill therefore prayed, that the said customs might be established, the defendants be decreed to account for the tithes as aforesaid in the year 1777, and pay to *John Morley, Rainforth, and Grpves*, what should be due thereon.

The defendants admitted, that *Sir N. Robinson, T. Gurnell, and W. Morley*, were the proprietors of the tithes of corn and hay in the township of *Dishforth* in the proportions as stated in the bill ; that the other plaintiffs rented the said tithes of them ; that in the year 1777 they were entitled to the said tithes in kind ; but they denied the customs as stated, and insisted, that on the contrary “ the occupiers of land in the township ought, “ by the custom thereof, to set out the tithe of hay from the “ swarth into grafs cocks, and that the tithe-gatherer thereof “ ought to make such tithe into hay in the field where the same “ had been mown, or to carry it away in grafs cocks, and afterwards make it into hay elsewhere at his will and pleasure :” AND ALSO, “ That the occupiers of lands therein ought to set “ out the tenth sheaf of all corn, grain, pease, and beans, as and for the tithe thereof. They admitted, that they had lands in the township, and that they had reaped, mowed, and cut down grafs, clover, wheat, corn, and other grain thereon, the tithes of which they were bound to pay in kind ; but denied that the same should have been made into corn stooks and large hay cocks, and the tithes set out in the manner pretended by the bill. They further said, that of late years the occupiers had sometimes set out their tithes of corn and grain in sheaves and sometimes in stooks, and their tithes of hay grafs and clover grafs in grafs cocks, and sometimes in hay cocks, in the manner mentioned in the bill ; but that such setting out of the said tithes was entirely at the will and election of the occupiers, for that they were not compellable so to set out the same.

The plaintiffs replied ; the defendants rejoined ; and witnesses were examined on both sides ; and upon hearing counsel on both sides ; and reading several depositions ; and on full deliberation had ;

THE COURT ordered issues to try the four customs as set forth in the bill. But on the second of *March* 1780, the defendants agreed to admit a verdict for the plaintiff on all the issues,

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against
BARROBY.

confessing all the customs, and that such verdict should be confirmed by the Court. The issues therefore were brought on to be tried by a special jury; and the jurors, upon their oath, found the same according to the agreement.

THE COURT accordingly, on the twenty-seventh of *April* 1780, ordered, that the four several customs be established; that the agreement be made an order of the Court; that all the defendants do abide by and perform the said agreement, and pay their own costs: the deputy remembrancer to tax the plaintiff's costs at law and in equity as between attorney and client, in case the solicitors cannot settle the same; and being so taxed, that the defendants do pay to the plaintiff's solicitor one full half of the amount of the costs, in full of such costs, the said plaintiffs first deducting the sum of twelve pounds, ten shillings, out of the moiety of such taxed costs.

TRIN. TERM,
19. GEO. 3.

HEYSHAM against SPENCE.

Hertfordshire, 10th June 1779.

The rector of *Little Munden*, in *Hertfordshire*, claims the tithes of corn, hay, and milk, which had arisen on that part of *Libury Farm* which is in *Great Munden*; and states,

that to obviate the inconvenience which had arisen from the uncertainty of what part of the said farm was in *Little Munden*, and what in *Great Munden*, he had agreed to give the rector of *Great Munden* 14^l. a year for such tithes thereof as was in his parish.

THE rector of *Little Munden*, in the county of *Hertford*, claimed all tithes which had arisen on *Libury Farm*, the house of which, and the greatest part of the lands, was situated in *Little Munden*, and the other reputed part of the said farm in *Great Munden*; and stated, that the said parishes were so intermixed, and the boundaries thereof so loosely ascertained, that the rectors of the said parishes had not known of what particular lands to claim their respective tithes; that the occupiers of *Libury Farm*, and particularly the defendant, had availed themselves, from time to time, of such difficulty, to the great disadvantage of the said rectors; that to obviate the said inconvenience, the plaintiff, in *March* 1779, entered into an agreement with the defendant *W. Fonnereau*, rector of *Great Munden*, to pay him, the said *Fonnereau*, fourteen pounds *per annum* for three years thence next ensuing, and to take, in consideration thereof, all the tithes arising from that part of *Libury Farm* which was reputed to be within the parish of *Great Munden*; that on the twenty-second of *May* 1779, he personally acquainted the defendant *Spence* therewith; that subsequent to such agreement, the defendant had had great quantities of cut grass, barley, oats, pease, and beans thereon, the tithes of which she had, in the then last harvest, partially and collusively set out, for that she had caused her barley to be mown with a scythe and bale, that great quantities might lie loose and littering about the fields, when she ought to have mowed her barley with a scythe and cradle, whereby the grain is kept close together, and the rows fall smooth and even, and are put into cocks with very little waste or litter; and he insisted, it was the usual method of mowing

mowing barley in the said parish ; that she had also kept and depastured thereon several cows and heifers, from which she had milk and calves, and had many other titheable matters, the tithes of which she had subtracted and refused to pay. The bill therefore prayed an account and payment.

HEYSHAM
against
SPENCE.

The defendant *Spence* filed a plea and answer to such part of the bill as sought an account of the tithes of such part of the farm as was in *Great Munden* ; AND PLEADED with a protestation that the plaintiff had not set forth, that *W. Fonnereau* had granted to him any tithes of *Great Munden* for any term, nor made title to any tithes in that parish ; AND FOR PLEA SAID, that it appeared by the bill, that the agreement that the plaintiff should pay fourteen pounds a-year for three years then next ensuing, and that in consideration thereof he should enjoy all the tithes arising from *Libury Farm* in *Great Munden*, together with all *Fonnereau's* right, title, and interest, in and to the same during the said term, was made in *March* next before the exhibiting of the same, TO WIT, in *March* 1775 ; and that by the 13. *Eliz.* c. 20. it was enacted, “ That no lease of any benefice
“ or ecclesiastical promotion with cure, or any part thereof, and
“ not being impropriated, should endure any longer than while
“ the lessees should be ordinarily resident and serving the cure of
“ such benefice without absence above eighty days in any one
“ year ; that every such lease, immediately upon such absence,
“ should cease and be void ; PROVIDED, that every parson
“ by the laws of this realm allowed two benefices might demise
“ the one of them upon which he should not be most ordinarily
“ resident to his curate only that should serve the cure for him ;
“ but that such lease should endure no longer than during such
“ curate's residence, without absence about forty days in any one
“ year.” AND HE AVERRED, that *W. Fonnereau* had been absent from his said benefice eighty days and more in the year next after the said agreement ; that the church of *Great Munden* was not impropriated ; that it was a benefice or ecclesiastical promotion with cure of souls ; that the plaintiff was not the curate of the said *W. Fonnereau* at the time or since the said agreement ; and that therefore the agreement for the tithes of *Libury Farm* was void ; and he prayed judgment of the court therein. The defendant admitted, that the plaintiff, for three years past, had been rector of *Little Munden*, and was, as such, entitled to all the tithes and ecclesiastical dues arising therein ; that she had been occupier of *Libury Farm* since *Michaelmas* 1773 ; that the parishes of *Great Munden* and *Little Munden* were intermixed ; that the rectors thereof had not known of what particular and specific lands to claim tithes ; but she said, that if the respective rectors had been ordinarily resident upon their respective benefices, they would have readily found the respective limits and boundaries of the parishes and the lands comprised in the same ; or that if their

The defendant
pleaded the sta-
tute 13. *Eliz.*
c. 20. in avoid-
ance of the said
lease.

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against
SPENCE.

curates even had been ordinarily resident thereon, *they* might have been enabled to have given the rectors a satisfaction in that respect, but that the curate of *Great Munden* had always lived at a great distance from the parish. She said, that she believed that part of *Libury Farm House* was in *Great Munden*, and the other part in *Little Munden*, but could not set forth what tithes had arisen on that part which was on *Little Munden*, or what in *Great Munden*; that the whole farm consisted of two hundred acres of land; that there were neither terriers or living persons who could give satisfactory information as to the respective boundaries of the parishes; that the plaintiff could not inform her of the lands he was entitled to the tithes of as rector of *Little Munden*, or she would have readily paid the tithes thereof; and she submitted to the Court, that she could not be compelled to account for the tithes claimed by the bill which had arisen in *Little Munden*, especially as she was incapable of distinguishing the boundaries of the parishes in the said farm, or to set forth what tithes grew upon such parts of the said farm as were within the one parish, and what were within the other.

The said plea came on to be argued; and it was ordered to stand for an answer, with liberty to the plaintiff to file exceptions thereto.

The plaintiff accordingly filed exceptions thereto; and the defendant put in a further answer, and set forth the land she had mowed, and what oats, barley, pease, and beans she had sowed and reaped thereon; and an account of the titheable matters and things she had had during the said time, and which she averred she had duly set out. She admitted, that she had caused all her barley to be mowed with a scythe and bale, she having been advised thereto by many farmers in her neighbourhood as the best method of husbandry; and that they had done so likewise. She denied, that she had caused her said barley to be littered or scattered about the field, or that she had given any directions for that purpose; but that, on the contrary, she had ordered her workmen to do every thing fair between them: but she admitted, that the plaintiff was not permitted to take his tithe of the rakings; and insisted, that he was not entitled thereto.

The defendant *W. Fonnereau* put in his answer without oath; and admitted, that the plaintiff was rector of *Little Munden*. He also admitted the agreement between them, and spoke as to *Libury Farm* lying in both parishes.

To which answers of the defendant *Spence* the plaintiff replied; the defendant rejoined; and witnesses were examined for both parties; and upon hearing counsel for all parties; and on reading the proofs taken in the cause; and on debate of the matter;

THE

THE COURT ordered the deputy remembrancer to take an account of what was due from the defendant *G. Spence* for the tithe of hay from the twenty-fifth day of *May* 1775 ; for the tithe of milk from the nineteenth day of *September* 1775 to the tenth day of *November* following ; and the said defendant to pay what should appear to be due upon the said account.

HEYHAM
against
SPENCE.
The Court ordered the defendant to account for the tithes of hay and milk ; and directed an issue to try if she had properly set out the tithes of corn and grain.

THE COURT further ordered an issue to try, " Whether the tithes of corn and grain had been fairly set out by the defendant *Grace Spence* in the harvest of the year 1775 on the farm in her occupation, called *Libury Farm*, in the pleadings of this cause mentioned : " The defendant *G. Spence* to be plaintiff at law, and the judge to indorse special matter on the *posse*.

The deputy remembrancer made his report, dated the ninth of *February* 1780.

Deputy's report.

The issue was tried ; and the jury found, " That in the harvest of the year 1775, the tithe of all corn and grain which arose, grew, or renewed in, from, or upon the farm called *Libury Farm*, had been, by the said *Grace Spence*, fairly set out, as the said *Grace* had alledged."

Verdict in favour of the defendant.

THE COURT, on the twentieth of *February* 1780, on reading the *posse*, the decree, the report, hearing counsel for the plaintiff, and on full debate thereon, ordered the deputy remembrancer's report to be confirmed, and the defendant *Spence* to pay forty shillings, being the amount reported due of the value of the tithes of hay and milk (*viz.* twenty shillings for the tithes of hay arising from the *headlands* or *bottoms* on five pieces of land part of the said farm in her occupation in the year 1775, and the sum of twenty shillings for the tithe of milk from the nineteenth of *September* 1775 to the tenth day of *November* following), with costs as to the tithes of hay and milk.

The report confirmed as to the tithes of hay and milk.

THE COURT further ordered the bill to be dismissed, with costs at law and in equity, as to all other matters.

The bill, as to other matters, dismissed.

SCOTT against WRIGHT.

TRIN. TERM,
19. GEO. 3.

Northumberland, 17th June 1779.

THE rector of *Simonburn*, in the county of *Northumberland*, claimed the tithes in kind of corn, grain, hay, and other great tithes, of milk, herbage, agistment of barren and unprofitable cattle, and all other tithes, dues, and duties whatsoever, yearly arising therein, and particularly from the farms and lands hereafter mentioned ; and stated, that the defendant *Wright*, ever since his, the plaintiff's, institution, had occupied *Eal's Farm*, *Letterford Door Farm*, and *Hillhouse Farm* ; of agistment from *Haughton Straber's Farm* and *Knott's Farm* ; and of milk from *Lee Hall Farm*.

The rector of *Simonburn*, in *Northumberland*, claims the tithes of corn and hay for *Eal's Farm* ; the tithes of corn from *Park End Farm*, *Linburst Farm*,

Farm,

SCOTT
against
WRIGHT.

Farm, as tenant to the defendants *the Aireys*; that the defendant *Ridley* occupied *Park End Farm*; that the defendant *Wilson* occupied *Lotterford Doors Farm*; that the defendant *Mason* occupied *Linkurst Farm*; that the said defendants, for four years past, had growing on their said farms wheat, barley, oats, pease, beans, clover, and saintfoin; that the defendant *Elliot* had ever since been occupier of *Haughton Strother's Farm*, and had kept, fed, agisted, and depastured thereon, a number of horses, geldings, mares, foals, steers, heifers, dry cows, and other barren and unprofitable cattle, either of his own or other persons taken in to agist for hire; that the defendant *Heron* had occupied the *Lee Hall Farm*, situate in the chapelry of *Bellingham*, in the said rectory, and had kept thereon milch cows, which produced milk; but that the said defendants had not only refused to pay, but had also refused to discover the quantities of the titheable matters so had by them as aforesaid, and the value of the same, or to account with him for the *single value* thereof. The bill then charged, that the parish of *Simonburn* was of great extent; that it consisted of the two districts of *Simonburn* and *Bellingham*; that the defendant *Heron* lived in *Bellingham*; that the farms he occupied were there situate; that there was no *modus* ever paid in the said district or chapelry of *Bellingham* in lieu of tithe milk; but that such tithe was payable in kind. The bill therefore prayed, that *Wright* might account for the *single value* of the tithes of corn, grain, and hay of *Eal's Farm*; the defendants *Ridley*, *Wilson*, *Mason*, and *Baity*, for the tithes of corn and grain on their several farms called *Park End Farm*, *Linkurst Farm*, *Lotterford Doors Farm*, and *Hillhouse Farm*; the defendants *Elliot* and *Knott* for the tithes of agistment of barren and unprofitable cattle kept by them in the parish; and the defendant *Heron* for the tithe of milk by him had in the chapelry of *Bellingham*.

The defendant *A. Wright* says, that he occupies *Eal's Farm*, and a piece of ground called *Longbaugh*, formerly part of *Park End Farm*; that his landlord is seised of the corn tithes of the said farms, and also of *Hillhouse Farm*;

The defendant *A. Wright* admitted, that the plaintiff was rector of *Simonburn*; that he, the defendant, occupied *Eal's Farm*; a piece of ground called *Longbaugh*; and another piece of ground, formerly part of a farm called *Park End*, in the said rectory; that the defendants *the Aireys* were seised of the said estates; that *T. Airey* claimed, in his life-time, the tithes of corn and grain of the said farms, and also of *Hillhouse Farm*, otherwise *Overtown Hill*; that he, the defendant, took the said tithes to farm; that he held the same under the said *T. Airey* till his death, and had ever since held the same of the other defendants *the Aireys*, his sons; that the said tithes of corn and grain, instead of having been at any time taken in kind by the plaintiff as rector, or by any former rectors, had on the contrary, for many years last past, been annually received by the said *T. Airey* and his sons; that the said tithes had been conveyed from one to another as lay property, and with the privity of

of the rectors of the rectory : and he set up a *modus* of sixpence a-year, payable at *Easter*, in lieu of the tithes of corn and grain arising on the piece of ground called *Longhaugh*, whether the same, or any part thereof, was in tillage or not ; and that he had offered to pay the same, but which the plaintiff had refused to accept. He further said, that during the time he occupied the four acres, two roods, thirty-eight perches, part of *Park End Farm*, it was in tillage, except during the first six years, when it was in grass ; that he made the same into hay, and converted it to his own use ; and he insisted on a *modus* of one penny a-year, at *Easter*, in lieu of the tithes of all grass yearly arising on *Park End Farm*, whether cut and made into hay or eaten by barren and unprofitable cattle ; and that such *modus* had been always accepted and taken by such rectors in lieu and satisfaction of such tithes ; and therefore, that he was not accountable to the plaintiff for any such tithe which had arisen on the said four acres, two roods, and thirty-eight perches, part of the said farm, especially as the owner of the residue thereof had either paid, or been willing to pay, and still was ready to pay, the said *modus*. He admitted, that he had had annually during the said time, on fifteen acres part of *Longhaugh Ground*, clover and other grass, which he made into hay and converted to his own use, without setting out the tithes thereof, insisting, that the *modus* of one penny a-year at *Easter*, payable for *Eal's Farm*, covered the piece of ground called *Longhaugh*, it having always been held and enjoyed therewith, including three acres, two roods, given in exchange to the rector ; and that he had actually paid the plaintiff the said *modus* in respect thereof up to *Easter* 1774.

The defendant *T. Ridley* said, that in 1764 his father was seised of *Park End Farm*, and *T. Airey* of *Eal's Farm*, which was contiguous thereto ; that they respectively claimed to be entitled to the tithes of corn and grain of the said farms, and entered into an agreement for an exchange of a few acres with one another of each farm, as stated in the answer ; that the said exchange was made accordingly ; that on his father's death, he became possessed of the said farm and the land so exchanged out of *Eal's Farm* ; that he had ever since been in possession thereof ; that he had reaped corn and grain therefrom ; that the tithes thereof were released to his father by the said agreement ; that, from the time whereof the memory of man was not to the contrary till the making of such exchange, the tithes of corn and grain arising from *Park End Farm* had constantly been publicly and openly received by the said *T. Airey*, and those under whom he claimed, without any interruption whatsoever from any of the rectors of the rectory, and with their privity, and as *lay property*, had always been conveyed, by fines, &c. from one to another ; that the residue of the said farm was, after the making of such exchange, and in consequence thereof, totally exempt

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and sets up a *modus* of 6d. a-year in lieu of the corn tithe, of *Longhaugh* ; and 1d. a-year in lieu of the tithes of hay and agistment of *Park End Farm*, including the said piece of ground called *Longhaugh* ;

that the owner of *Park End Farm* had paid or offered to pay the said *modus* ;

that he had paid the *modus* for *Eal's Farm* to *Easter* 1774.

The defendant *T. Ridley* says, that his father owned *Park End Farm* ; that *T. Airey* owned *Eal's Farm*, and the corn tithes of both ; that an exchange was made, by which the tithes were released to his father ;

that the said tithes had been conveyed as *lay property* ;

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and he insists on
the *modus* of 1d.
a-year, in lieu of
the tithes of
Eal's Farm ;

and the same as
to the residue of
Park End Farm ;

and that he had
paid the same to
Easter 1774.

The defendant
Wilson says, he
occupies *Lotter-*
ford Doors Farm
and part of
Park End Farm.

The defendant
Mason says, he
occupies *Linburst*
Farm.

The defendant
Baity says the
same as to *Hill-*
house Farm ;

The defendants
say, that the
tithes of the
corn and grain
thereof had been
immemorially
paid to the lord
of the manor of
Ticket ;
that *the Aireys*
were lords of the

exempt from payment of tithes ; but how, or in what manner, the said *T. Airey* claimed such exemption, he could not tell ; but that his father having purchased the tithes of corn and grain of the residue of *Park End Farm* and of the three acres, two roods, he became, on his death, entitled thereto ; and that being the owner and proprietor thereof, he was not accountable to the plaintiff for any tithes until he should establish his right thereto. He further said, that during the time he had possessed the said piece of ground so given in exchange, the same had been used as meadow ; that he had had thereon great quantities of grass, which he had made into hay ; and he insisted on the *modus* of one penny, payable annually at *Easter* by the owners or occupiers of *Eal's Farm*, in lieu of all tithes of grass yearly arising therein, whether the same be made into hay or eaten by barren and unprofitable cattle. He also admitted, that ever since he became the owner or occupier of the residue of *Park End Farm*, he had had great quantities of grass, which he had cut and made into hay, and converted to his own use ; and insisted on the like *modus* of one penny payable annually, as before stated in the defendant *Wright's* answer ; and said, that he had paid the same up to *Easter 1774*, and had always been ready and willing to pay the same since.

The defendant *Wilson* said, that for four years past he had occupied *Lotterford Doors Farm* ; that he had reaped thereon corn and grain, the tithe whereof had been taken in kind by the rector ; that he also occupied, as tenant, *sixteen acres* of ground (no part of the said farm), formerly part of *Park End Farm* ; that he had reaped corn and grain therefrom ; but that the plaintiff was not, for the reasons aforesaid, entitled to any tithes or other satisfaction for the same.

The defendant *Mason* said, that he occupied *Linburst Farm* ; that he had annually cut thereon corn and grain ; but he insisted, as aforesaid, that the plaintiff was not entitled to any tithes, or other satisfaction for the same.

The defendant *Baity* said, that he occupied *Hillhouse Farm*, and had cut and reaped thereon corn and grain ; but insisted, that the plaintiff was not entitled to any tithes, or other satisfaction for the same.

All the said defendants said, that the tithes of corn and grain yearly arising from the said farm and lands, and the *sixteen acres* formerly part of *Park End Farm*, had been immemorially paid to the owners of *the Manor of Ticket*, in the said rectory, or to those claiming under them ; that they had respectively paid their tithes of corn and grain to *the Aireys*, who claimed to be entitled thereto as devisees under the will of *T. Airey*, their late father, the owner thereof and of other lands within the said

rectory,

rectory, and in particular of *Eal's Farm*; that the rector had never received any tithes of corn and grain from the said sixteen acres from *Linburst Farm* and *Hillhouse Farm*; but that such tithes were reputed to be *lay property*, and to have immemorially passed and been conveyed as such, without interruption by any former rector; and that therefore they ought not to be accountable to the plaintiff for the same; that they had on their said farms, called *Lotterford Doors*, *Linburst*, and *Hillhouse*, grass, which they had made into hay; and they insisted on the said distinct *modus* of one penny, payable at *Easter* in lieu thereof, as before stated; and that such sums had accordingly been paid up to *Easter* 1775, or offered to be paid to the rector in lieu and satisfaction of such tithes.

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and insisted on
the *modus* in
favour of *Lotter-*
ford Doors Farm,
Linburst Farm,
Hillhouse Farm,

The defendant *Wilson* insisted upon the like *modus* of one penny in respect of *Park End Farm* and the sixteen acres before mentioned, in lieu of the tithes of grass and hay yearly arising upon the same, as stated in the answer of the defendant *Ridley*, the owner and occupier of the residue of the said farm.

Park End Farm,
and the Sixteen
Acres.

The defendant *J. Heron* admitted, that on the twelfth of *May* 1774 he became occupier of *Lee Hall Farm*, containing seventy-four acres, situate in the chapelry of *Bellingham*, in the said rectory; and he set forth the number of cows he had kept and depastured thereon; the number of calves they had had; and the quantity of milk they had produced; and insisted, that when such calves in any one year amounted to five, the rector was, by the immemorial custom of the parish, entitled to one half of one, or the value thereof; and when to the number of six, to one of such calves; and so in like manner for any other or greater number of such calves; that by another custom, the several owners of lands in the said chapelry had immemorially paid to the rector for each of such cows not having a calf, commonly called a farrow cow, threepence; and for each of such cows having a calf, called a milked cow, in case the calves dropped or produced from such milked cows did not in any one year amount to five or more, twopence; and if five or more, three halfpence only; that such several payments of twopence and three halfpence, for or in lieu of tithe milk produced from such farrow cows and from such milked cows, according to such respective cases and events, had been constantly and uniformly accepted by the rectors of the said rectory, or their farmers, tithe-gatherers, or agents, according to such custom; and that no tithe in kind had at any time within memory been taken for such milk by the plaintiff or any former rector of the said rectory, or other satisfaction made for the same.

The defendant
J. Heron says,
that he occupies
Lee Hall Farm, in
the chapelry of
Bellingham; and
sets up several
modus in lieu
of the tithes of
calves and milk.

The

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The defendants
the Aireys say,
that *Mary Lambe*
was seised in fee
of the corn tithes
of the said
farms ;

that she gave
them, by her
will, to their
father ;

that their father
gave three acres
and two roods
of *Eal's Farm*
for four acres,
two roods, and
thirty-eight
perches of *Park
End Farm*, and
the corn tithes
of the residue ;

that their father
devoted the said
tithes to them ;

that they, their
father, and his
predecessors, had
constantly en-
joyed the same ;

that they had al-
ways uninterr-
ruptedly passed
as lay property.

The defendants *the Aireys* admitted, that the plaintiff was rector of the rectory ; and said, that *Mary Lambe*, widow, was, in her life-time, seised of the tithes of corn and grain yearly arising on the several farms in the said rectory, viz. *Eal's Farm*, including a parcel of ground called *Longhaugh*, *Park Side Farm*, *Park End Farm*, and sixteen acres of ground then held with *Lotterford Doors Farm*, which was formerly parcel of *Park End Farm* and *Hillhouse Farm*, otherwise *Overtownhill Farm* ; that the farms called *Eal's Farm*, including *Park Side Farm*, *Park End Farm*, and the sixteen acres aforesaid, and *Linburst Farm*, were parcel of *Wark's Park* ; that she being so seised made her will and a codicil, dated the seventeenth of *April* and the third of *November* 1759, and thereby gave her estate at *Eal's* and all other her real and personal estate whatsoever to the defendants father, his heirs, &c. ; and that she died without revoking the will ; that their father, after her death, entered upon *Eal's Farm*, and became seised thereof ; and that he received the tithes of corn and grain arising on the said farm, and on the other farms aforesaid, and continued in possession and receipt thereof until *March* 1764 ; that he then agreed with the defendant *Ridley*, the owner of *Park End Farm*, to give him, the said *Ridley*, three acres and two roods of *Eal's Farm* in exchange for four acres, two roods, and thirty-eight perches, parcel of *Park End Farm*, and also the tithes of corn and grain to arise as well from the said three acres and two roods as from the residue of the said *Park End Farm* ; and that such agreement of exchange was carried into execution ; that their father being so seised of the said farms and tithes made his will, dated the fifth of *December* 1770, and thereby gave to the defendants all his real and personal estate ; that he died the twenty-eighth of *January* 1771 ; that thereupon they became entitled to the said farms and lands and tithes before mentioned ; that they entered thereupon, and received the rents and profits of the said tithes then in lease to the defendant *Wright*, and had ever since continued in possession and receipt of the rents and profits thereof ; and they claimed to be entitled to *Eal's Farm* and the tithes thereof accordingly. They denied, that the tithes of corn and grain arising from the said respective farms and the said sixteen acres had at any time been taken in kind by the plaintiff, or by any former rectors of the parish ; but that, on the contrary, the same had, for a number of years past, been received annually by them, their father, and the said *M. Lambe*, and those under whom they claimed ; and that such tithes had always passed and been conveyed from one to another as lay property ; that particularly so long ago as the fifth year of *James the First*, A FINE had been levied thereof ; and that the same had been always so conveyed and enjoyed with the privity of the rectors of the parish, who constantly acquiesced therein ; that particularly one *C. Ridley*, a former rector, in the tenth year of

of *James the First*, was so conscious of his not being entitled to receive the said tithes as rector, that he purchased and took conveyances thereof from some person claiming the same as *lay property*, and enjoyed the same accordingly as lessee, and not as rector of the parish; but that they could not tell by what means such tithes were originally disposed of as *lay property*, nor why they were so conveyed, save by some ancient grant or otherwise.

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against
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The defendant *E. Elliot* said, that he had, for four years past, occupied *Haughton Strother Farm*, and had fed thereon barren and unprofitable cattle, an account of which he set forth; but insisted, "that one penny a-year had been paid at *Easter*, " by the owners or occupiers of *Haughton Strother Farm*, to the " rector, as a *modus* in lieu of the tithes of grass yearly arising " thereon, whether made into hay or eaten by barren and " unprofitable cattle;" that it had been paid to *Easter* 1766.

The defendant *Elliot* says, he occupies *Haughton Strother Farm*; and insists on a *modus* of 1d a-year, in lieu of the tithes of the grass arising on the same, whether it be eaten or mowed.

The plaintiff replied; the defendants rejoined; and several witnesses were examined on both sides; and counsel heard for several days on behalf of all parties; and upon reading the several proofs in the cause on the behalf of the defendants; an exhibit marked number one, intitled, "1767, *Eal's Antonio Wright*," signed the twenty-sixth of *May* 1768, *Henry Wastle*; a receipt signed *Henry Wastle*, intitled, "Strother's *Easter Reckonings* 1766;" another receipt, dated the twelfth of *April* 1757, signed *Thomas Mayer*; and upon hearing the reply; and on full debate of the matter;

The cause heard.

THE COURT, which was full, ordered the bill, so far as it sought an account of the tithes of corn and grain, except on *Langhaugh*, to be dismissed with costs; and so far as it sought an account from *A. Wright* for the tithes of hay arising on his lands to be likewise dismissed with costs.

The bill dismissed as to the corn tithes and hay of all the said farms excepting *Langhaugh* and *Haughton Strother Farm*;

THE COURT further ordered the following issues to try,

and issues directed to try,

FIRST, "Whether the sum of sixpence hath yearly and every year, at *Easter*, or so soon after as demanded, been constantly and invariably paid by the said defendant *A. Wright* and the former owners and occupiers of the piece of ground called *Longhaugh*, in the pleadings of this cause mentioned, to the rectors of the rectory and parish of *Simonburn* for the time being, as a *modus* for and in lieu and full satisfaction of all tithes of corn and grain yearly arising, growing, or renewing, in or upon the said piece of ground, whether the same, or any part thereof, was in tillage or not, and whether such *modus* or yearly payment of sixpence hath been constantly and " invariably

1st, Whether 6d. a-year is payable at *Easter*, by the owners of *Longhaugh*, to the rectors of *Simonburn*, in lieu of the corn tithes thereof.

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“ invariably taken and accepted by such rectors thereof re-
“ spectively, in lieu and satisfaction of the said tithes of corn
“ and grain.”

2dly, Whether
1d. a-year is
payable at *Eas-*
ter, by the own-
ers of *Haughton*
Strotter Farm,
to the said rec-
tors, in lieu of
the grass tithes
thereof.

SECONDLY, “ Whether, from time whereof the memory
“ of man is not to the contrary, the sum of one penny yearly
“ and every year, at *Easter*, hath been constantly and invariably
“ paid and payable by the owners or occupiers of lands and
“ grounds called *Haughton Strotter*, now in the occupation of
“ the defendant *E. Elliot*, to the rector of the said rectory
“ and parish of *Simonburn* for the time being, as a *modus*
“ for and in lieu and full satisfaction of the tithes of all
“ grass yearly arising, growing, or renewing in and upon the
“ said last-mentioned lands or grounds, whether such grass be
“ cut and made into hay or agisted by barren and unprofitable
“ cattle, and whether such *modus* or yearly payment of one
“ penny hath accordingly, for all the time aforesaid to *Easter*
“ 1766, been taken and accepted by such rectors respectively, in
“ lieu and satisfaction of all the said tithes of grass.

The defendant *Wright* to be plaintiff at law in the first issue,
and the defendant *Elliot* in the second issue; to be tried by a
special jury; the judge at liberty to indorse any special matter;
and the costs of this suit, except as before directed, to be
reserved.

The defendant
Heron ordered to
pay the tithe of
milk in kind.

THE COURT further ordered the deputy remembrancer to
take an account of what was due to the plaintiff from *J. Heron*
for the tithes of milk arising from his cows kept, fed, and depas-
tured on the lands by him occupied within the said rectory or
parish of *Simonburn* during the time demanded by the bill, but
without costs.

The second issue
found in favour
of the *modus*.

The second issue was accordingly tried, and a verdict obtained
by the defendant *Edward Elliot*, the plaintiff in the said issue,
who had since departed this life, whereby the said suit as to him
was abated.

The rector de-
clines trying the
first issue, and
it is taken *pro*
confesso.

The rector *James Scott*, who was the defendant in the first
issue, declined trying the same; and on the fourteenth of *June*
1780, it was taken as confessed by the defendant.

The bill, as a-
gainst *Wright*,
dismissed with
costs.

On the twenty-third of *June* 1780, the Court ordered the
bill to be dismissed as against *Wright* with costs.

The deputy remembrancer made his report, dated the
sixth of *June* 1782; and on the fourth of *July* following
it was confirmed, and *Heron* ordered to pay to the plaintiff the
sum of eight pounds reported due for and in respect of the tithe
of his milk.

UPCHER *against* THE MAYOR OF SUDBURY.TRIN. TERM,
42. GEO. 3.*Suffolk, 17th June 1779.*

THE bill stated, that the plaintiff, as only son, heir at law, and administrator of *A. Upcher*, deceased, was the owner of the rectory impropriate of *Saint Gregory*, in *Sudbury*, in the county of *Suffolk*, and entitled to all tithes in kind, both great and small, arising in the said parish; that the plaintiff *Lillie*, about the year 1761, was tenant to the plaintiff's late father, who died intestate in *April 1770*; that the said *Lillie* had ever since been, and then was, the tenant of the said tithes; that before and ever since *Michaelmas 1760*, the defendants, the mayor, aldermen, and capital burghesses of the borough of *Sudbury* had been owners of *Pitt Meadow*, in the said parish, and had had corn, grain, hay, barren and unprofitable cattle, and other titheable matters thereon; that before 1761, they had been used to compound with the impropriator or his lessee for the tithes yearly arising from *Fulling Pitt Meadow*, at the rate of four shillings an acre, which yearly amounted to two pounds, eight shillings; that for several years previous to *Michaelmas 1761*, and up to that time, they had paid *Lillie* the said composition of two pounds, eight shillings, yearly; but that since that time they had refused to pay the same, or to permit him to take the tithes in kind. The bill therefore prayed, that the defendants might either pay the plaintiff *Lillie* the said composition of two pounds, eight shillings yearly during the time aforesaid, or set forth and discover the particular quantities of corn, grain, and hay, by them mowed, cut, reaped, or taken in each of the aforesaid years since *Michaelmas 1761*, and the full and real values thereof respectively, and the number of dry, barren, and unprofitable cattle, agisted, fed, and depastured on the said meadow land during such time, and the value of the agistment tithe thereof, and all other titheable matters and things had by the said defendants of and from the said meadow during the time aforesaid, and might either be decreed to pay the plaintiff *Lillie* all and singular the arrears of the said composition, after the rate of four shillings an acre, or come to a fair account with him for the tithes of the several matters aforesaid, and pay and satisfy him the full value of such tithes as should appear to be due upon taking the said account.

The impropriator of the rectory of *Saint Gregory*, in *Sudbury*, in the county of *Suffolk*, claims from the corporation of *Sudbury* the tithes of *Fulling Pitt Meadow*.

See other causes, Trinity Term, 7. Will. 3.; Hilary Term, 10. & 11. Anne; Trinity Term, 13. Anne; Trinity Term, 1. Geo. 1.; and Hilary Term, 3. Geo. 1.

The defendants appeared, but refused to put in their answer; whereupon process of contempt was issued against them for want thereof; and by an order, the sixteenth day of *July 1778*, a writ of *sequestration* was directed to be issued, under the seal of this court, to sequester the real and personal estate of the defendants until they had fully answered their said bill, and satisfied their contempt.

The defendants appear, but refuse to answer, and stand out process of contempt.

UPONER
against
THE MAYOR
OF SUDBURY.

A writ of sequestration returned *nulla bona*, &c.

The bill taken as confessed, and the tithes ordered to be paid accordingly.

Two of the commissioners named in the sequestration returned the writ, and certified, that the defendants had no lands or tenements, goods or chattels, which they could sequester.

On the twentieth day of *May* 1779, the cause was ordered to be set down in the paper to be heard upon the sequestration and the return thereof; and upon hearing counsel for the plaintiff; and reading the record of the bill; and the writ of sequestration; and the return thereon;

THE COURT ordered the bill to be taken as confessed by the said defendants, and the deputy remembrancer to take an account of what was due to the plaintiff *Lillie* for the tithes of the *Fulling Pitt Meadow* during the time demanded by the bill (except in 1774), and for the agistment tithes during the time aforesaid; and that the said defendants do pay the plaintiff *Lillie* the value thereof, or account with him for the arrears of the composition, after the rate of two pounds, eight shillings yearly, in lieu of such tithes; the defendants to pay the plaintiff their costs.

TRIN. TERM,
19. GEO. 3.

GIBSON against CAMPBELL.

Bedfordshire, 2d July 1779.

The vicar of *Biggleswade*, in *Bedfordshire*, is not entitled to the agistment tithes of barren cattle fed on after-grass, particularly of post-horses fed on after-grass during the time that they were lame and unable to work.

THE vicar of *Biggleswade*, in the county of *Bedford*, which vicarage was a peculiar within the jurisdiction of the dean and chapter of *Saint Mary Lincoln*, and was endowed, as such, by the inquisition of the said dean and chapter in 1277, stated, that there was, by such endowment, among other things reserving all manner of jurisdiction to the said prebendary and portions of altarage, the following particulars reserved to the prebendary of *Biggleswade*, TO WIT, "The tithes of wool and
" lambs, together with the tenth money arising by that name;
" ALSO the principal legacies of all manner of parishioners
" dying; ALSO the tithes of merchants coming from their
" traffic; ALL the residue of the altarage, by whatsoever name
" it is reckoned, we apply and appoint to the portion and
" support of the vicar of the said place and his ministers there;
" ALSO that the said prebendary content with the portions of
" altarage above expressed, which are reserved to him by an
" appointment, liable to claim nothing at all beyond them from
" the profits of the altar, or any other obventions whatever, but
" whatever else shall arise which ought to be reckoned in the
" altarage or lesser profits of the said prebend, we grant and
" appoint entirely to the uses and disposition of the vicar afore-
" said;" that the plaintiff, by virtue of his said institution and induction into the said vicarage, and of the said endowment, had become entitled to all small tithes or lesser profits of the said prebendary, except what was specially reserved, by name in
such

GIBSON
against
CAMPBELL.

such endowment, for the use of the said prebendary ; that the defendant *Trott* had, for four years past, been the occupier of a messuage, with the gardens and appurtenances, called *the Sun Inn*, and also several acres of arable, meadow, and pasture ground therein, and had reaped, taken, and enjoyed from the said premises calves, milk, turnips, roots, herbs, fruits, pease, beans, and other garden stuff, poultry, eggs, honey, clover seeds, and grass seeds, the tithes whereof were due and payable to the plaintiff ; that he had also kept and depastured thereon several oxen, cows, and heifers, and also horses, mares, and geldings, which were not used in husbandry, but employed as post horses, to his profit, the tithes whereof ought to have been rendered to the plaintiff ; that he had also fed and depastured on his said lands several sheep not used in folding of lands, and afterwards sold the same again before shearing, whereby an agistment tithe thereof became payable ; that the plaintiff had applied to him to account with him for the said tithes, which he had refused to do ; that the defendant *Campbell* pretended, that she was lessee of the said prebendary ; and that, by virtue of a lease and the said endowment, she was entitled to all *the great tithes* of the said parish, and also to the portions of the altarage specially reserved by the said endowment, and likewise to the tithes of clover seed, grass seed, and other seeds, and also turnips, and the agistment of great and small cattle fed thereon ; that the former lessees under the said prebendary had always taken and received all the several portions of the altarage last-mentioned ; that the prebendaries had demised the same to her ; and that she had demised the same to the defendant *Trott* ; whereas the plaintiff insisted, that for thirty years past he had received the tithes of all barren and unprofitable cattle. The bill therefore prayed, that his right to receive the tithes demanded by the bill might be established ; and that the defendant *Trott* might be decreed to account for all the tithes and titheable matters which had arisen, grown, renewed, or happened on the lands in his occupation in the said parish of *Biggleswade* since the first of *January* 1772, and make the plaintiff a reasonable satisfaction for the single value thereof.

The defendant *Trott* admitted, that the plaintiff was duly instituted into the said vicarage ; that he still continued vicar there ; that the vicarage was a peculiar, and within the jurisdiction of the dean and chapter of the cathedral church of *Saint Mary Lincoln* ; that it was endowed, as such, by the inquisition of the said dean, &c. ; and that such endowment was to the effect as stated in the bill ; that the plaintiff was, by such institution, induction, and endowment, well entitled to all *the small tithes* of the prebend of *Biggleswade*, except what was specially reserved by such endowment for the use of the prebendary ; that he, the defendant, had, ever since *April* 1770, occupied

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the Sun Inn, with the gardens and appurtenances thereunto belonging, and also a farm within the said parish; and he set forth an account of the titheable matters and things he had grown thereon, and the value of the tithes thereof; and submitted to the Court, that no tithe agistment was due to the plaintiff in respect of the after-grass produced on his farm after such grass had been fairly mowed, nor for or in respect of any beasts fed thereon, such tithes not being due of common right, and there not being any custom existing within the said parish for the payment of any agistment tithe on such after-grass. He admitted, that since he had occupied *the Sun Inn* he had kept, one year with another, between sixty and seventy mares and geldings, which had been chiefly used as post-horses; and said, that some of them had been occasionally employed in husbandry; but he denied that such mares and geldings had, for the greater part of the said time, been kept and depastured on his meadow and pasture ground, but on the contrary had been kept in the stable: and he insisted, that his said post-horses were not agisted on his farm, except during the time they were used in husbandry, or when they were lame, or were by sickness or accident unable to go as post-horses. He also insisted, that no agistment tithe was due in respect of his horses depastured merely with after-grass; and submitted, that if it should appear that there was such a custom in the parish, yet that no agistment tithe was due in respect to such of his horses as had been turned out to grass whilst employed in husbandry, or whilst they were lame and unfit for service, and therefore unprofitable. He admitted, that he was under-lessee of the prebend of *Biggleswade*, and of all the great tithes of the parish, and also of the portion of altarage specially reserved to the prebendary by the endowment; and that as such, apprehending himself entitled to the tithes of clover seed and agistment of all great and small cattle depastured in the parish, he had instituted a suit in this court for the recovery of such last-mentioned tithes, but as the court had determined, on the hearing of the cause, that the tithes of the said clover seed and agistment were, by virtue of the said endowment, due to the plaintiff, he should not for the future set up any claim thereto (a). He said, that upon entering upon his said farm he was informed, that the plaintiff did not receive small tithes in kind, but an annual sum or composition in lieu thereof, on or about *Easter Monday* in every year, of one pound, one shilling, or one pound, eleven shillings, and sixpence, which he had paid, and tendered the same for 1773, which the plaintiff had refused. He further said, that the plaintiff did not afterwards apply to him for any small tithes in kind, or any sum of money in lieu thereof, or give him any notice that he intended to discontinue

(a) See *Trott v. Rudd*, ante, page 11.

receiving

receiving any composition money, as he had before done; and that he was willing to make the plaintiff any satisfaction he should think reasonable for and in respect of the small tithes which had accrued due since the time he had so paid his composition.

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The defendant *Campbell* admitted, that she claimed to be lessee, under the prebendary of *Biggleswade*, of all the premises comprised in and demised by an indenture of demise dated the twentieth of *May* 1747; and that, by virtue of such lease, the said defendant, or her undertenants or assigns, were well entitled to all the great tithes arising within the said parish and titheable places thereof, and also the portions of altarage specially reserved by and excepted out of the said endowment. She said, that it has been lately determined in this court, on a suit instituted by the defendant *Trott* against *Rudd* and the plaintiff, that the tithes of clover seed, grass and other seeds, and also of agistment of great and small cattle, belonged, by virtue of the said endowment, to the vicar of the said parish of *Biggleswade* for the time being; and that therefore she did not set up any claim to any of the said tithes.

To which answers the plaintiff replied; and the defendant rejoined; and witnesses were examined on the behalf of the plaintiff and the defendant *Trott* only; and upon hearing counsel for all parties; and on full debate;

THE COURT ordered the bill, so far as it sought a satisfaction from the defendant *Trott* for the tithes of agistment on after-grass, to be dismissed.

The parties referred all other matters in dispute between them to arbitration.

FRANKLYN *against* MICKLEM.

TRIN. TERM,
19. GEO. 3.

Berkshire, 2d July 1779.

THE bill stated, that *R. Gayer*, being seised in fee of the rectory of *Hurley*, in the county of *Berks*, by indenture dated the twenty-third of *May* 1758, demised to the plaintiff, amongst other things, all the tithes of the said rectory arising in or about the lands and woods thereby demised, or in any part thereof; and also the tithes of two parcels of meadow land in *Parish Mead*; and also all the tithes of corn and hay arising in the township, fields, or parish of *Hurley*, except as in the said bill is excepted, to hold for thirty-one years, at the yearly rent of two hundred and sixty-eight pounds; that the plaintiff, by virtue of the said demise, had entered on the premises, and had ever since received the greater part of the tithes; that the defendants had, for several years past, occupied land, the corn,

The vicar of *Hurley*, in *Berkshire*, is entitled to the tithes of corn on the *Gardenage Lands*, and to the small tithes of the whole parish; but the rector is entitled to the tithe hay on the said lands, and to the great tithes of the rest of the parish.

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grafs, and hay tithes of which were comprised in the said lease, and ought to have been paid to the plaintiff, as lessee of the rectory; but that the defendant *Smith* the vicar had claimed and received the same as vicar, under a pretence, that by some endowment or prescription he was entitled to the tithes of corn, grain, and hay, in some parts of the parish, and to the tithes of all clover hay and sown grafs throughout the parish; the contrary of which the plaintiff charged to be true; and prayed, that *Smith* might set forth the title by which he claimed the said tithes; and that the other defendants might set forth a particular thereof, and account with the plaintiff for the same.

The defendant *Micklem* and others admitted, that they had paid the vicar the tithes of corn, grain, and hay; and said, that it appeared by several terriers and other writings, that he was entitled thereto in several parts of the parish.

The vicar insisted, that he was entitled, by prescription, to the tithes of corn and grain yearly arising in those parts of the parish which were called *Gardenage Lands*, as described in a terrier of the vicarage, dated the twenty-ninth of *November* 1704, and, except in some privileged grounds in *Hurley Town Tithing*, to the tithe hay, and all small tithes in the whole of the parish.

THE COURT, on reading a lease from *R. Gayer* to the plaintiff, dated the twenty-third of *May* 1758; a terrier of the parish of *Hurley*, signed *Henry Lovelace*, vicar, and with the marks of two churchwardens, dated the twenty-fifth of *December* 1688; another terrier, dated the twenty-ninth of *November* 1704; another, dated 1635, signed by the said vicar and two churchwardens; another, without date, called "*a Particular*"; the several proofs in the cause; and on full debate of the matter; directed an issue to try,

FIRST, "Whether the vicar was endowed of the tithes of
" corn and grain arising on *Gardenage Lands*, that is to say, one
" acre in the occupation of the defendant *Micklem*, two acres in
" the occupation of the defendant *Webb*, three roods in the
" occupation of the defendant *Bosier*, and one half acre in
" the occupation of the defendant *Leaver*."

SECONDLY, "Whether he was endowed of the tithes of
" hay arising on the lands in the occupation of the said de-
" fendants."

The defendant *Smith* to be plaintiff at law; to be tried by a special jury; the judge to indorse any special matter; and further directions to be reserved till after trial.

The issues were accordingly tried; when a verdict was given for the vicar on the first issue, and against the occupiers on the second issue.

THE

THE COURT, on the twenty-seventh of *April* 1780, accordingly ordered the bill to be dismissed as to the plaintiff's claim on the occupiers for tithe on the *Gardenage Lands*; and the deputy remembrancer to take an account of the tithe hay arising on the other lands in the defendants the occupiers respective occupations in the said parish for the space of five years before the filing of the bill; each of the said parties to abide by his own costs.

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MICKLEM.

THE COURT FULL.

EVANS *against* GREEN.

TRIN. TERM,
19. GEO. 3.

Middlesex, 3d July 1779.

THE bill stated, that the vicar of *Fulham*, in the county of *Middlesex*, was entitled to the small tithes of the parish; that by indenture of lease, dated the tenth of *October* 1776, *G. Jepson*, the then vicar, demised to the plaintiffs *Evans* and *Shaddock* all the small tithes arising therein, and in the hamlet of *Hammer Smith*, from the twenty-ninth of *September* preceding, for three years; that they, by virtue thereof, being possessed of the said tithes, did, by agreement dated the fourteenth of *October* 1776, agree, that *T. Groves*, since deceased, should hold the tithes arising upon several pieces of garden ground, containing eleven acres and a half, then in the occupation of the defendant, for one year from the twenty-ninth of *September* preceding; that by virtue of the said agreement, *Thomas Groves* became entitled to receive the said tithes arising thereon; that the defendant, during one year afterwards, held the said garden ground, and had thereon, during that time, plants, shrubs, roots, herbs, fruits, flowers, apples, pears, plumbs, cherries, peaches, apricots, gooseberries, currants, raspberries, strawberries, pease, beans, pulse, potatoes, turnips, cabbages, favoys, brocoli, lettuce, onions, parsley, melons, cucumbers, asparagus, and other garden stuff; the tithes of all which, had they been duly paid to him, would have been worth twenty pounds; that *T. Groves* died intestate; and that soon afterwards, the plaintiff *Anne Groves*, his widow, administered. The bill therefore prayed an account and payment.

The vicar of *Fulham*, in *Middlesex*, is entitled to the tithes of the hamlet of *Hammer Smith*.

See other causes, Easter Term, 11. Car. 2.; Trinity Term, 2. Anne; Hilary Term, 4. Anne; Mich. Term, 6. Geo. 1.; and Hilary Term, 23. Geo. 3.

The defendant admitted, that the vicar was entitled to the small tithes; that *Evans* and *Shaddock* were, from the month of *October* 1776, farmers thereof under *G. Jepson*; that they, about the time in the bill mentioned, had agreed, that *T. Groves*, deceased, should hold the small tithes arising from the said garden ground; that from the twenty-ninth of *September* 1777, and ever since, he, the defendant, had occupied the same, and had had thereon the matters mentioned in the bill; that four acres thereof had been used either for grass or for growing

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growing beans and pease, the tithes of which he had paid to the impropriator of the parish; and he said, that for fourteen years before *Michaelmas* 1777, he had paid no more than thirty shillings a-year as a *composition* for the small tithes of the said garden ground, and that he had paid the same for one year to the plaintiff *Evans*; but that after the twenty-ninth of *September* 1776, he had refused to accept the same; and that he, the defendant, not being able to settle any composition with them, was resolved, that they should take their tithes in kind; that accordingly, about the twenty-ninth of *September* 1776, he caused a notice in writing to be delivered to them signifying such his resolution; and that he set out a full tenth part of all the titheable matters and things which had arisen on his said garden ground; which tithes the said *T. Groves* took during his life, and his wife after his death, as long as they thought proper.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and upon hearing counsel on both sides; and reading the proofs; and on debate of the matter;

THE COURT ordered the bill to be retained for a year, but without prejudice to any demand the plaintiffs might have in future against the defendant for an account of the tithes in question; and that in the mean time the said plaintiffs be at liberty to bring their action against the defendant upon the statute, for not setting out his tithes according to law.

The like proceedings were had in the case of *Evans v. Wilmore*, the under lessee, instead of *Anne Groves*, for the tithes of the year 1777.

The said *Anne Groves* and *William Wilmore* accordingly brought their action on the plea side of this court against the defendant on the statute.

And the causes came on to be tried before THE LORD CHIEF BARON SKYNNER; when all matters in difference were, by consent, referred to the award of *Michae Impey, Esquire*, who was also to settle what should be paid in future by the defendant as a *composition* for the said tithes; and on the twelfth day of *September* 1780, the said *M. Impey* made his award in favour of the defendant, with costs of suit; and certified, that he had settled that the sum of three pounds, eleven shillings, was a fair and adequate composition to be paid by the defendant for the said tithes.

HAGGARD

HAGGARD *against* HALLOWS.MICH. TERM,
20. GEO. 3.*Hertfordshire, 15th November 1779.*

THE rector of *Bennington*, in the county of *Hertford*, claimed all tithes, both great and small, which had arisen therein since 1775 on *Pophill* and *Brook Field* and other common fields, and particularly the tithes of sheep, lambs, oxen, and other barren and unprofitable cattle, sows, geese, ducks, hens, pigs, eggs, and the tithe of all corn and grain which had arisen on *the Head Lands* of the defendant's lands, charging, that the defendant had refused to permit him to take tithe of the lambs which had been dropped on his said farm, unless he would pay for the keeping thereof from the time they were a month old, and that the time for the tithing of lambs was not until they were capable of living without the dam, which was not until they were four or five months old, and that in the mean time, no payment or allowance whatsoever was to be made for the keeping thereof; and claiming a tenth part of the whole value of each litter of pigs, be the number more or less than ten at the time of weaning them; and of all eggs whether consumed in the defendant's family or sold in the market, or otherwise disposed of.

The rector of *Bennington*, in *Hertfordshire*, claims the tithes of the agistment of sheep and barren cattle; corn grown on *the Head Lands* of the common fields; of lambs when capable of living without their dams, and free of any expence of keeping them till that time; the tenth part of every litter of pigs, though under ten; and the tenth part of all eggs, as well eaten as sold.

The defendant said, that about the month of *September 1774* he came to reside in the said parish on *Samburn's Farm*; that with the consent of the plaintiff, he had paid him a composition in lieu of all tithes, dues, and duties, to the twenty-ninth of *September 1775*, when the same ended; that from that time he had paid him all such tithes as he apprehended were justly due to him; that great part of the arable lands belonging to him were situated in divers common fields, called *Brook Field*, *Pophill Field*, &c.; that he had growing thereon (except such part as laid fallow) wheat, barley, oats, pease, and beans, in each year, since the twenty-ninth of *September 1775*, but had paid the plaintiff his tithes thereof, excepting only the tithes of the corn which he had reaped from *the Head Lands* in the year 1778; and he contended, that no tithes were due for the same. He also said, that he had yearly depastured on the said farm several sheep, and had paid to the plaintiff the tithe of wool, and all tithes due to him in respect thereof; that he had not, until 1778, any lambs yeaned or dropped, when he had eleven lambs dropped, one of which died; and that he had offered to deliver him one lamb as tithe thereof some time after the same was yeaned, which he refused to accept; that for two years he let some of his land to tenants, who had grown turnips thereon, and fed sheep thereon till the said turnips were eaten off; and he conceived, that they should have paid the tithes of the said turnips to the plaintiff. He also

The defendant says, that no tithes are payable for the corn reaped from *the Head Lands* of the common fields;

that he offered to pay the tithe lambs some time after they were yeaned;

that he let his land to tenants, who sowed it with turnips, and eat them off

with sheep; and that the tenants should pay the tithes thereof; said,

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that he had offered the tithe pig.

said, that he had not fed and depastured on his said lands any cattle or sheep for hire, from which he had received any profit. He admitted, that he had had a considerable quantity of pigs; and said, that he was ready to pay the plaintiff his due for the same.

The cause heard on the bill and answer.

By an order dated the twenty-third day of *June* last, it was ordered, that the plaintiff should be at liberty to set this cause down to be heard on the bill and answer; and upon hearing counsel on both sides;

The tithes of the corn on the *Head Lands* decreed; and also the tithes of lambs, turnips, pigs, and eggs.

THE COURT ordered the deputy remembrancer to take an account of what was due for the tithes of corn and grain on all the *Head Lands*, and for the tithes of sheep, wool, lambs, turnips, pigs, eggs, and agistment tithe for the several years as demanded by the bill, with costs.

HILARY TERM
20. GEO. 3.

THE DEAN AND CHAPTER OF RIPPON against PARKER.

Yorkshire, 11th February 1780.

The dean and chapter of Rippon claim all tithes, except the tithes of corn, hay, wool, lambs, and all other profits appertaining to the dissolved church of *St. Willfred*, arising in the chapelry of *Pateley Bridge* and the township of *Dacre cum Beverley*. See other causes, Mich. Term, 6. Car. 2; Trinity Term, 5. Car. 2; Hilary Term, 16. Car. 2; Easter Term, 18. Chr. 2; and Hilary Term, 29. Geo. 2.

THE bill stated, that the plaintiffs were entitled to all issues, sums of money, profits, and hereditaments whatsoever, thencefore called or known by the name of *Communities*, to the late collegiate church of *Saint Willfred*, of *Rippon*, and also all those sums of money, and profits, emoluments, and hereditaments, commonly called the *communicant money* or *dividend money*, free rents, tithes of mills, altarages, fines, and lentin tithes, in *Rippon*, in the several towns and fields of *Rippon*, in *Pateley Bridge*, in *Grantley*, or elsewhere, oblations, mortuaries, churchings, marriages, oblations of communicants, oblations of the pixes, the principal feasts, ploughpence, *Easter offerings*, tithes of woods and underwoods, divers other hereditaments and profits, and all other things and particulars whatsoever thencefore called by the name of the *communities*, or accounted for under that name, of which *James the First* had been seised in right of his crown, as parcel of his *duchy of Lancaster*, or as parcel of the possessions of the dissolved collegiate church of *Saint Willfred* of *Rippon*; that the said tithes, profits, and hereditaments, consisted, among other things, of all manner of tithes (except the tithes of corn, hay, wool, and lambs), and of all oblations, obventions, and offerings, arising in the parish of *Rippon*, and particularly in the chapelry of *Pateley Bridge*; that they were in the year 1770, and ever since had been, also entitled to all tithes (except as aforesaid), oblations, &c. arising in the township of *Dacre cum Beverley*, otherwise *Bewerley*, in the said chapelry of *Pateley Bridge*; that the defendant *Parker* and others, in the year 1770, occupied farms, and resided in the said township, and had in each year depastured therein barren and unprofitable

fitable cattle of their own and other persons ; that they also had had foals, calves, and pigs, brought forth therein ; that they also had milk, honey, garden stuff, eggs, and other titheable matters yielding small tithes ; that they also had divers persons residing in their respective families in every year of the age of sixteen years ; that they had not set out any of the tithes thereof, or paid the several oblations and offerings so due, but had absolutely refused so to do. The bill then charged, that the chapelry of *Pateley Bridge* was within the parish of *Rippon* ; that it consisted of the four townships of *High Bishop Side*, *Low Bishop Side*, *Dacres*, and *Bewerley* ; that the inhabitants of the said hamlets resorted to the chapel at *Pateley Bridge*, which was parochial ; that they there attended divine service, received the sacrament, buried their dead, were baptised and married ; that the inhabitants of each of the four hamlets named a churchwarden at the visitation of the *Archbishop of York* held for the said parish of *Rippon* ; that all the four churchwardens for the said chapelry acted as such ; that the inhabitants of the said four hamlets paid annual or other parochial rates or assessments towards the repairs and maintenance of the chapel, and of the curate thereof ; and that they had, until lately, constantly paid all the small tithes (except wool and lamb), *Easter* offerings, mortuaries, and other profits, to the plaintiff's collectors. The bill then further charged, that the defendants *Graham*, *Danby*, and *Masterman*, were entitled to the tithes of corn, hay, wool, and lambs only, and not to any other species of tithes whatsoever in the said townships and places, or either of them, or to any offerings, oblations, or obventions whatsoever ; that all tithes (except as aforesaid), and all offerings, oblations, and obventions whatsoever, within the said hamlets, township, or places, had always been answered and accounted for separately and distinctly from the rest of the possessions of the church of *Saint Willfred*, under the title of *communities* ; and that the said plaintiffs were entitled thereto ; that although the defendants *Graham* and others, and those under whom they claimed, had constantly received the tithes of corn, hay, wool, and lambs, within the said townships, particularly from the lands occupied by the defendant *Parker* and others, yet they had never received any other tithes, or any obventions or offerings, but the same had been constantly paid to the plaintiffs or their collectors ; that although the defendant *Graham* and others had set up some title thereto under *Sir John Ingleby*, yet upon inspecting his title deeds and leases, in which the said estates were mentioned to be within the said parish and chapelry, or one of them, he relinquished his said claim, and the said plaintiffs had till lately quietly received the tithes. The bill therefore prayed, that *Sir B. Graham*, *W. Danby*, and *W. Masterman*, might set forth what claim they had to any of the said small tithes, oblations, offerings, and obventions, due from the other defendants,

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or

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or any of them ; and that the occupiers might account for their tithes, oblations, and offerings for six years past, and pay the said plaintiffs what should appear due to them on such account.

The defendants deny, that the dean and chapter of Rippon are entitled to any small tithes or other vicarial dues arising in the township of *Dacre cum Buerley* ;

and state, that the township is extra-parochial ; that the tithes thereof consequently belong to the crown or its grantees ; that the lands of the township of *Dacre cum Buerley* were parcel of the possessions of the abbey of *Fountains* anterior to the council of *Lateran* ; that the monks of the abbey were of the *Cistercian* order, and exempted from the payment of tithes ; that the abbey was dissolved by *Henry the Eighth*, and continued free and discharged of tithes by the statute 31. Hen. 8.

but that if the lands in the said township were not so discharged of tithe,

The defendants, the occupiers, denied, that the plaintiffs were in the year 1771, or at any time since, entitled to any of the small tithes, oblations, obventions, or *Easter* offerings, arising in the township of *Dacre cum Buerley*. They admitted, that they resided and occupied lands therein ; that they had in the said years depastured thereon barren and unprofitable cattle ; that they had also had foals, calves, pigs, milk, honey, garden stuff, eggs, and other titheable matters yielding small tithes, and persons in their families at the age of sixteen years ; and that they had not set out any of the tithes, or made any satisfaction for the same ; for that the township of *Dacre cum Buerley* had been immemorially a forest, parcel of the demesnes of the crown of *England*, and was extra-parochial ; that all the tithes of places extra parochial belonged to the crown or its grantees ; that the abbey of *Fountains* had been founded by *Thurston*, Archbishop of *York*, in the year 1132, for monks of the *Cistercian* order ; that *Roger de Mowbray*, long before the council of *Lateran*, namely, in the reign of *Stephen*, granted to the church of *Fountains*, and the monks of the before-mentioned order, the said abbey of *Fountains*, the place in which the same had been situated, other lands therein mentioned, *Dacre*, all *Nidderdale*, all *Buerley*, and all his lodges there ; that the said grant was afterwards confirmed by *Richard the First* and *Edward the Second*, as by their several grants and *inspeximus's* appeared ; that the said abbey had been one of the greater abbeys, and surrendered and dissolved in the thirty-first year of *Henry the Eighth* ; that at the time of such surrender and dissolution, the abbot and monks thereof were seised and possessed, in right of the church, of the several lands granted by the said *Roger de Mowbray* freed and discharged from the payment of tithes, by virtue of the canon made in the council of *Lateran* in the year 1295 ; that the several lands, tenements, and hereditaments, therein before mentioned had been formerly parcel of the possession of the said abbots and monks ; that the owners and occupiers of the said lands were entitled, by virtue of the statute made in the thirty-first year of the said king, to hold and enjoy the same free from the payment of all tithes in like manner as they had been enjoyed by the abbot and monks of the said abbey at the dissolution thereof ; that the township of *Dacre cum Buerley*, otherwise *Bewerley*, was no part of the prebend of *Studley*, in which right alone the said plaintiffs claimed to be entitled to the tithes mentioned ; but that if the said plaintiffs could make out their title to the afore-

said

said tithes within the said township, the defendants then insisted, that by 1. *Edw. 6. c. 14.* for the dissolution of chantries, the collegiate church of *Rippon*, and the prebends thereunto belonging, had been dissolved; that the corps of the several prebends, and particularly the prebend of *Studley Magna*, otherwise *Studley*, and the lands and tithes belonging to the corps of the same prebend, did immediately thereupon become vested in the crown; that *James the First*, by his grant as well under THE GREAT SEAL OF ENGLAND as under the seal of his county palatine and *duchy of Lancaster*, dated the twenty-eighth of *April*, in the sixth year of his reign, granted to *F. Phillips* and *R. Moore*, their heirs, &c. all that his prebend of *Studley*, within the collegiate church of *Rippon*, with all its members and appurtenances, parcel of the lands and possessions of his *duchy of Lancaster*, together with all manner of tithes whatsoever, as well great as small, and other the hereditaments therein, to hold to them in fee, as of the king's manor of *Greenwich*, by fealty in common socage; that by indenture of bargain and sale, inrolled in the court of king's bench, dated the fifth of *June 1610*, and made between the said *Phillips* and *Moore* and *Sir William Ingleby, Knight*, and *Thomas Ingleby, &c.* they granted to them, &c. for ever all the prebend of *Studley* aforesaid, and all manner of tithes, as well great as small, to hold to them for ever; that soon after, the said *Inglebys* conveyed divers parcels of ground, lands, &c. parcel of the premises comprised in the said indenture, and all the great and small tithes whatsoever arising within the same, and divers other lands in the said township, to divers persons inhabitants of the said township, or resident in the neighbourhood thereof, in fee simple, or for some long term of years, under several yearly rents thereupon reserved to the grantors and their heirs; that under the grant of *James the First* to the said *Phillips* and *Moore*, and the bargain and sale from them, the said *Inglebys* and their heirs, and those claiming under them were entitled to all the tithes, both great and small, yearly arising, &c. upon the several farms and lands, and to all oblations and obventions within the said township. The answer further stated, that *James the First* had, by his letters patent dated the thirtieth of *November*, in the eighth year of his reign; given, granted, and confirmed to *A. Higgins*, clerk, and several others, their heirs and assigns, all those his issues, sums of money, profits, and hereditaments whatsoever, then lately called *the communities*, and belonging, &c. to the collegiate church of *Saint Willfred*, in *Rippon*, or accounted for under the title of *the communities* of the said church, consisting of divers particulars, as fully stated in the answer, to hold to them and their heirs for ever, rendering to the said king, his heirs, &c. the rent of forty-six pounds, eight shillings, and sixpence three farthings, yearly to be paid to the receiver of *the duchy of Lancaster*,

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the collegiate church of *Rippon*, including the prebend of *Studley*, was dissolved, and the lands and tithes thereof vested in the crown; that the lands belonging to the township were parcel of the prebend; that *James the First* granted the prebend to *Phillips* and *Moore*, to hold as of his manor of *East Greenwich*; that *Phillips* and *Moore* conveyed the same to the *Inglebys*;

that they thereby became entitled to the great and small tithes of the said township;

that *James the First* granted the *communities* and other profits belonging to the church of *Saint Willfred* to *Higgins*;

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that the plaintiffs cannot entitle themselves to the same under the said grant, because the township of *Dacre cum Buerley* never was any part of the parish of *Rippon*, or of the chapelry of *Pateley Bridge*, but had always been *extra-parochial*, and had not been granted to them by the crown; that *Phillips* and *Moore* sold the prebend of *Studley* to the *Inglebys*;

that the *Inglebys* sold the several parcels of land of which the tithes are now claimed to the defendants;

that the purchasers were entitled to all the tithes and profits thereof;

ter, &c. &c.; that the said letters patent are the same as the plaintiffs claim under; but whether the said plaintiffs were, by virtue thereof, entitled to the tithes, profits, and hereditaments thereby granted, the said defendants left to them to make out. They denied, that by virtue of the said grant, or in any other right whatsoever, the plaintiffs had been in 1770, or at any time since, entitled to all or any manner of tithes or oblations and offerings arising, &c. within the township of *Dacre cum Buerley*; for that the said township was not at the time of making such letters patent, or at any other time within the parish of *Rippon*, or the chapelry of *Pateley Bridge*, but was, and had been beyond the memory of man, and hitherto continued to be *extra-parochial*, and not within or parcel of any parish or chapelry whatsoever; and that by the laws, customs, and constitutions of this realm, all the tithes great and small of places extra-parochial belonged to the crown, and not to the rector, vicar, dean and chapter, prebendaries or prebendary, of any parochial or collegiate church whatsoever, unless they had been appropriated or annexed thereto by virtue of some grant from the crown. They then stated, that by bargain and sale dated the twenty-fifth of June 1610, between *Phillips* and *Moore* and *Sir William Ingleby*, of *Ripley*, knight, and *Thomas Ingleby*, for the considerations therein mentioned, they had sold to them, their heirs, &c. for ever, all that the prebend of *Studley*, within the collegiate church of *Rippon*, with all the tithes, oblations, rights, &c. of the yearly rent of twenty-six pounds, eleven shillings, and threepence, as fully, &c. in fee-farm, to hold the same to the use of them, their heirs, &c. for ever, paying to his said majesty, his heirs, &c. for the said prebend of *Studley*, with the appurtenances, twenty-six pounds, eleven shillings, and threepence annually into the hands of his receiver general of the said duchy, &c. They insisted, that soon after the execution of the said indenture of bargain and sale, the said *Inglebys* granted, bargained, sold, and demised, to divers persons inhabitants of or resident in *Dacre cum Buerley*, especially to the then owners of the messuages and lands which the said defendants had and did then occupy the tithes of corn, grain, hay, wool, lamb, flax, hemp, all other tithes whatsoever, as well great as small, all the oblations, obventions, fruits, profits, and commodities, and all other tithes whatsoever to the said late prebend belonging, yearly arising upon divers messuages, farms, closes, or parcels of ground, lands, and woods, situate in *Dacre cum Buerley*, *Dacre*, *Dacre Pasture*, and other places near thereunto, under several small yearly rents thereby reserved, payable to the said grantors and their heirs. They also insisted, that under the said grant and the said indenture of bargain and sale the said *Inglebys* and their heirs, and those claiming under the several grants and demises made by them as
afore said,

aforesaid, were, entitled to all the tithes both great and small, and to all oblations and obventions yearly arising in the said township and pasture. They admitted, that they had respectively in 1770, and ever since, resided in, and occupied divers messuages, farms, and lands, within the township of *Dacre cum Buerley*, otherwise *Bewerley*, and had depastured thereon divers barren and unprofitable cattle belonging to them; but had not agisted the cattle of any other person for hire (save that the defendant *Moore* had agisted two foals in 1775); and they might have had divers foals, calves, and pigs, brought forth within the limits of the said township, and have had milk, honey, garden stuff, eggs, and other titheable matters yielding small tithes, and also divers persons in their families of the age of sixteen years and upwards; and that they had not made the said plaintiffs any satisfaction for the same, and had always refused to comply with their requests, as they were not entitled to any kind of tithes whatsoever, obventions, or offerings, arising within the said township or any part thereof. They also said, that the chapelry of *Pateley Bridge* was within the parish of *Rippon*; but denied, that the townships of *Dacre cum Buerley*, or any part thereof, were within the limits of the said chapelry or parish. They also admitted, that some of the inhabitants of the said township, and of *High and Low Bishopside*, resorted to the chapel of *Pateley Bridge*, and attended divine service, received the sacrament, buried their dead, baptized their infants, and married, the same lying nearer the said townships than any other. They also admitted, that the inhabitants of *Dacre-cum Buerley* had sometimes named two persons to appear with two others appointed by the said townships of *High and Low Bishopside* at the visitation held at *Rippon*, who acted as chapelwardens for the said chapelry; and that the inhabitants of the said townships of *Dacre cum Buerley*, from time to time, had paid certain small sums towards the repairs and maintenances of the said chapel; but they insisted, that such payments had been always voluntary, and not in the nature of an annual or parish rate or assessment which could have been enforced if the inhabitants had refused to pay. They insisted, that the lands so occupied by them were not only *extra-parochial*, but that they had never been described as lying within the said parish and chapelry, or either of them, in any of the title deeds, leases, or writings relating thereto. They admitted, that the late *Sir John Ingleby* had, in his life time, claimed to be entitled to divers small sums, and for the rents reserved by the grants and demises so made by his ancestors to the inhabitants of *Dacre*. They also admitted, that they had always submitted to pay him the said sums demanded of them for or in respect of the messuages and lands then in their respective occupations, the tithes thereof had been so granted to the then owners of the same messuage or lands, amounting to one pounds, nine shillings, and three halfpence, which said rents they had always understood

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and they state
the several tithe-
able matters
they had there-
on;

and admit, that
Pateley Bridge is
within the pa-
rish;

that the inhabi-
tants of *High and Low*
resorted to the
parish church,

and appointed
churchwardens;

that they had
paid 11 ⁹/_s. 1 ¹/₂ d.
which they un-
derstood to be in
lieu of small
tithes.

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to be in lieu of all small tithes and ecclesiastical dues payable for the lands in their several occupations, and which he and his successors alledged they would have been entitled to under the said letters patent of the twenty-eighth of *April*, in the sixth year of *James the First*, in case no such grants had been ever made by his ancestors after the execution of the said indenture of bargain and sale. They denied, that the other defendants, as devisees in trust and the executors of *Sir John Ingleby*, were entitled to the tithes of corn, grain, hay, wool, lambs, or any other species of tithes, in or out of the lands occupied by them. They said, they could not admit that all tithes (except the tithes of corn, hay, wool, and lambs), and all offerings, oblations, and obventions whatsoever, within the said hamlets, townships, or places, had ever been accounted for separately and distinct from the rest of the possessions of the church of *Saint Willfred* of *Rippon*, within the said townships and places, under the title of *communities*, or had ever been distinguished from the tithes of corn, hay, wool, and lambs, in the said townships or places; and denied, that the plaintiffs were entitled thereto by virtue of the said first-mentioned letters patent, or that the said other defendants, or those under whom they claimed, had ever received the tithes of corn, hay, wool, and lambs, within the said townships and places, and particularly from the lands by the said defendants, nor any other tithes, obventions, or offerings, which had not been paid to the plaintiffs, as in the bill was alledged. They also said, that they did not believe that *Sir John Ingleby* had ever relinquished the same; and denied, that the plaintiffs had, upon any such relinquishment, received quietly such other tithes, obventions, or offerings, either of the said defendants or other inhabitants of or owners and occupiers of lands to and throughout the said townships in general, several of whom, the defendants believed, had always refused to pay any sum or sums in lieu of small tithes arising within the said township.

The defendants *Graham*, *Danby*, and *Masterman*, answer, as executors of *Sir John Ingleby*, and say, that he left the manor of *Ripley*, *Dacre*, and *North Deighton*, and all his lands in *Studley*, *Dacre*, *Buerley*, and *Rippon*, to *Collins* and *Lampleigh*;

The defendants *Graham*, *Danby*, and *Masterman*, said, that *Sir John Ingleby* made his will, dated the eleventh of *July* 1770, and appointed them executors thereof; that he devised all his manors of *Ripley*, *Dacre*, and *North Deighton*, with their respective rights, and all his freehold lands whatsoever, situated in *Studley*, *Dacre*, *Buerley*, *Rippon*, and other places, to *J. Collins* and *T. Lampleigh* and their heirs, to the uses therein declared; that on his decease, the defendants *Graham* and *Masterman* alone accepted the executorship. The answer then further stated, that certain letters patent, dated the thirtieth of *November*, in the eighth year of *James the First*, had been granted by him to *A. Higgins*, clerk, and others, to hold to them and their heirs (as is therein mentioned) for ever, rendering to the said king the

yearly rent of forty-six pounds, eight shillings, and sixpence three farthings, as fully stated in the answer, and referred to by the bill ; and they spoke to the same effect as the other defendants had done touching the same ; but they denied, that by virtue of such letters patent, or any other grant, or otherwise howsoever, the plaintiffs were entitled to all or any manner of tithes, oblations, obventions, or offerings, arising within the township of *Dacre cum Buerley* ; for that the said township was, at the time of the dissolution of the collegiate church of *Saint Willfred* in *Rippon*, parcel of the prebend of *Studley*, belonging to the said church, in which right alone the plaintiffs could pretend to claim the tithes ; that by virtue of some act of parliament, or otherwise, the collegiate church, and the several prebends thereunto belonging, had been dissolved, and the corps of such prebends, and particularly of the prebend of *Studley*, and the lands, tithes, hereditaments, and appurtenances thereunto belonging, vested in THE CROWN ; that many years afterwards, by letters patent dated the twenty-eighth of *April*, in the sixth year of *James the First*, he granted to *Phillips* and *Moore*, their heirs, &c. all that his prebend of *Studley*, within the collegiate church of *Rippon*, with all its members and appurtenances, and by the particular mentioned to be of the annual rent of twenty-six pounds, eleven shillings, and threepence, and to be then late parcel of the lands and possessions of his said duchy, &c. as therein mentioned, to hold the same to them, their heirs, &c. for ever, as of the king's manor of *East Greenwich*, &c. paying the said yearly sum of twenty-six pounds, eleven shillings, and threepence, &c. as aforesaid ; that an indenture of bargain and sale, dated the twenty-fifth of *June* 1610, was made between the said *Phillips* and *Moore* and *Sir William Ingleby* and *Thomas Ingleby*, as stated in the other defendant's answer ; that soon after the execution of the said bargain and sale, the said *Inglebys* granted and demised to divers persons, as before recited ; that under the said grant from *James the First*, the said *Phillips* and *Moore*, and the said indenture of bargain and sale, the said *Inglebys* and their heirs, and those claiming under the several grants and demises made by them as aforesaid, had been and were entitled to all tithes both great and small, and all oblations and obventions yearly arising in *Dacre cum Buerley*, *Dacre*, and *Dacre Pasture* ; that they had in their respective times received the same, and especially the aforesaid mentioned sum of one pound, nine shillings, and three halfpence, from the other defendants, as in their answer is mentioned ; that they had never received, nor did they believe, that *Sir John Ingleby* had ever received the tithes of corn, hay, wool, and lambs, or any other tithes, or any obventions or offerings within the said township and places, except the said annual rents before mentioned ; and that any such tithes, oblations, obventions, or offerings within the several townships

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that the township of *Dacre cum Buerley* was parcel of the prebend of *Studley* ;

that the prebend became vested in the crown ;

that *James the First* granted the said prebend to *Phillips* and *Moore* ;

that they conveyed the same to the *Inglebys* ;

that the *Inglebys* had thereby become entitled to all the tithes, both great and small, in *Dacre cum Buerley* ;

that the dean and chapter of *Rippon* are only entitled to the tithes of corn, hay, wool, and lambs,

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heard, and the
evidence read.

aforesaid, nor any compositions in lieu thereof, had been ever paid by the inhabitants and occupiers of land in the said townships and places, to the said plaintiffs or their collectors.

To which answers the plaintiffs replied ; the defendants rejoined ; and many witnesses were examined on both sides ; and upon hearing counsel several days for all parties ; and reading the following evidence for the plaintiffs, TO WIT, a grant under the great seal, dated the second of *August*, in the second year of *James the First* ; another grant under THE GREAT SEAL and the seal of the *duchy of Lancaster*, dated the eighth day of *June*, in the fifth year of the said king ; a decree under the seal of the *duchy court*, dated the eleventh day of *March*, in the fifth year of *James the First* ; letters patent under THE GREAT SEAL, dated the thirtieth of *November*, in the eighth year of *James the First* ; an *inspeximus* of an order of the *duchy court*, dated the eighteenth of *February*, in the eleventh year of *James the First* ; a certificate of the *Archbishop of York* and others, from the augmentation office, dated the fourteenth of *February*, in the second year of *Edward the Sixth* ; a certificate from the augmentation office of the chantries, colleges, and free chapels, without a date ; a copy from the said office touching *Rippon*, being entitled, “ the cathedral mother and parochial church of “ *Rippon* ;” several entries thereout ; several exhibits taken from THE ARCHIVES of the dean and chapter of *Rippon*, VIZ. entries out of the chamberlain’s account in 1479, under the titles, “ *Colleg. Beati Wilfred.*”—“ *Redditus et firme fines* “ *quadagesimales, Oblations, Astimales, et Hiemales, et Pacb. et* “ *Mortuar. et alii &c.*” “ *Item of 4l. 14s. 10d. de firm minut.* “ *decimas, viz. &c. necnon al. minut. decim. de parische de Rippon* “ *decim de Stodeley Magna et Stodley Roger, &c. firm. garb.* “ *et fœni decim. cum altaragia de PATELEY BRIDGE ;*” three other chamberlain’s accounts in 1514, 1525, and 1541 ; a lease from the dean and chapter of *Rippon* to *Thomas Markinfield*, dated the eighteenth of *April*, in the first year of *Edward the Sixth*, signed by *Radolp. Sygyswicke, Camerar.* ; the chamberlain’s accounts from the *duchy court*, viz. “ *York* “ *communitas Ecclesiæ*”—“ *Collegiat. de Rippon*”—“ *decim inolen-* “ *din. ;*” a copy of a lease, dated the tenth of *February*, in the fifth year of *Edward the Sixth*, “ *Prebend de Stanwig, &c.* “ *Ebor. Rex ad firm. demisit Thome Holcroft, omn. exitus persicue* “ *pertinent. ad ecclesiam de Rippon dividend money, &c. nec non* “ *decimas garbar. grani et fœni de PATELEY BRIDGE, nuper demis.* “ *Thome Markinfield ;*” another indenture of lease of the prebend of *Studley*, dated the twentieth day of *February*, in the said fifth year of the said king, “ *Ebor. Rex ad firm. demisit Ricard.* “ *Asketon ;*” another indenture of lease from the archives of the dean and chapter of *Rippon*, and from the said dean and chapter, dated

dated the seventeenth of *June*, in the nineteenth year of *Charles the Second* 1667 to *Henry Thompson*; another indenture of lease, dated the twenty-seventh of *May* 1684, from the said dean and chapter to *John Hardy*; another lease, dated the twenty-ninth of *May* 1703, to *Jane Hardy*; another, dated the thirtieth of *May* 1734, to *Richard Dickinson*; a tithe book, or an *Easter* account of tithes received in the chapelry of *Pateley Bridge*, which was objected to, but the objection over-ruled; the following various titles and entries, viz. "1704, 1705, marriages at *Pateley Bridge*;" "mortuaries and *Easter* dues, entries, *Bewerley*, &c.;" also "*Pateley Bridge Easter* book for 1716, 1717, and 1718;" and several others relating to *Pateley Bridge* in the several years 1751, 1752, 1753, and 1754, touching mortuaries received by *John Scott*, title, "*Bewerley, Abraham Parker*, one shilling and twopence, and *M. Lupton*, four shillings;" several depositions of witnesses; the answer of the defendants the occupiers; several entries out of the accounts of *Radolph Sygismwicke*, the chamberlain, from *Saint Mark's Day* 1540 to *Saint Mark's Day* 1541; and upon reading the following evidence for the defendants the occupiers, TO WIT, an annexation by the *Archbishop of York* of the tithes of the waste places of *Dacre* and *Bewerley* to the prebendary of *Studley* and church of *Rippon*, dated the twenty-fifth of *February* 1361; a book from the archbishop's court, intitled, "*Capitula Thoresby, fol. 50, Ordination*" on receipt of the tithes out of *Dacre* and *Bewerley*; another book out of the duchy court in the time of *Edward the Sixth*; and *pysica*, intitled, "*Dimissiones Cantar. et Consimiliter, &c.*;" a lease of the prebend of *Studley*, dated the twentieth of *February*, in the fifth of *Edward the Sixth*; a book intitled grants from the duchy of *Lancaster* from the seventeenth year of *Queen Elizabeth* to the twenty-fourth year of the said *Queen*; a grant to *Francis Ingleby*, dated the seventeenth of *November*, in the twenty-fourth year of the said *queen*; a lease, dated the fourth of *February*, in the twenty-ninth year of the said *queen*, of *William Ingleby*; a lease for the term of twenty-one years, dated the twenty-first of *May*, in the forty-first year of *Queen Elizabeth*, to *William Ingleby*; a grant not under seal, but called a bill, from the privy seal office of the prebend of *Studley* to *Phillips* and *Moore*, dated the twenty-sixth of *April*, in the sixth year of *James the First*; another conveyance from the said *Phillips* and *Moore*, dated the twenty-fifth of *June*, in the eighth year of the said *King James*, to *William* and *Thomas Ingleby*, of the said prebend of *Studley*; a counterpart of a lease of the said prebend of *Studley* from *Sir William Ingleby* and *Thomas Ingleby* to *Sir Miles Atkinson*, dated the tenth of *September*, in the tenth year of the said *king*; the several following passages out of a particular from the duchy office, intitled, "*Com. Ebor. Ecclesia nuper Collegiat.*"

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“ *de Rippon* ;” a memorandum made at the end thereof, TO WIT, “ *Com. Ebor. Compren Oium Dominis Maner. &c. Ecclesia* “ *nup. Colleg. de Rippon Comps. Thomæ Holcroft nuper Prebend de* “ *Studley* ;” the depositions of several witnesses for the defendants ; and reading further evidence for the plaintiffs, TO WIT, a lease from *Queen Elizabeth* to *Robert Dawson*, dated the ninth of *May*, in the forty-first year of her reign ; a particular thereof ; an account of *Radolph Sygifwicke*, chamberlain, dated the fourth year of *Edward the Sixth* ; an account of *Sir Thomas Holcroft*, dated the fifth and sixth years of *Phillip and Mary* ; and hearing the plaintiff’s counsel in reply ;

The cause stood adjourned for the judgment of the Court to this day, when,

The defendants are ordered to account for all small tithes except of wool and lambs, and for all oblations, &c. as claimed by the bill.

THE COURT, being unanimously of the same opinion, ordered the deputy remembrancer to take an account of what was due to the plaintiffs, the dean and chapter of the collegiate church of *Rippon*, from the defendants, the occupiers for all their respective small tithes (except the tithes of wool and lambs) claimed by the bill ; and for their oblations, obventions, and *Easter* offerings, respectively due from 1770 to 1779, and down to the time of the deputy remembrancer’s report ; further directions to be reserved till after report.

SKYNNER, *Chief Baron.*
EYRE, *Baron.*
HOTHAM, *Baron.*
PERRY, *Baron.*

HILARY TERM
20. GEO. 3.

TWELLS against WELBY.

Lincolnshire, 21st February 1780.

The rector of the chapelry of *East Allington*, in the parish of *Sedgbrook*, and the rector of *West Allington*, in *Lincolnshire*, claims the tithes of the *Old Inclosures* ; and states,

THE bill stated, that the plaintiff *Twells* was, in *May 1762*, duly instituted and inducted into the mediety of the rectory of *Sedgbrook*, in the county of *Lincoln*, and was also at the same time duly instituted and inducted into the other mediety of the said rectory, with the chapelry of *East Allington*, to the said mediety’s or one of them annexed ; that he had ever since been the rector thereof ; that the plaintiff *Bacon* was, in *January 1768*, duly instituted into the rectory and parish church of *West Allington* ; that he had ever since been the rector thereof ; that the lordship or township of *Allington* lay in the said two parishes of *East Allington* and *West Allington* ; that the lands thereof consisted of eighteen hundred acres, about one thousand acres of which were open corn fields ; that the remainder had been more than one hundred years ago inclosed, and were called *the Old*

Old Inclosures; that the said two parishes adjoined together; that the *Old Inclosures* lay therein, viz. part thereof in the said medieties of *East Allington*, and the other part thereof in the parish of *West Allington*; that the boundaries of each parish had never been perambulated in the memory of man; and that it was impossible to know how many acres of the said *Old Inclosures* lay in each parish; but that it had been, time out of mind, or at least ever since the making the said inclosures, apprehended that the half thereof lay in *West Allington*, and the other half in *East Allington*; that for that reason the occupiers of land lying within the *Old Inclosures* had compounded with the rectors of each parish for the tithes arising therein, and had paid one moiety to the rector of *West Allington*, and the other moiety to the rector of *Sedgbrook*, with the chapel of *East Allington* annexed; that the plaintiff *Twells* and his predecessors had been entitled to receive the tithes of corn, grain, hay, milk, wool, lambs, and all other titheable matters, both great and small, yearly arising within or upon such part of the *Old Inclosures* as lay within the said medieties and chapelry, or some adequate satisfaction for the same, and particularly the tithes in kind of all corn, grain, and hay growing within such part of the *Old Inclosures* as lay within the said medieties and chapelry, and for the agistment of barren and unprofitable cattle, and of cattle taken in to agist for hire, and of milk, wool, calves, and lambs had from cows and sheep kept within or upon such part of the *Old Inclosures* as lay within the said medieties and chapelry; that the plaintiff *Bacon*, as rector of *West Allington*, had been entitled to receive the like tithes in kind arising within such part of the *Old Inclosures*, as lay within *West Allington*. The bill then charged, that the several defendants then, and for several years past had respectively occupied land in the *Old Inclosures*, part of which from *Michaelmas* 1775 to *Michaelmas* 1776 was arable, and part pasture or grass lands, and had thereon corn and grain, and had also fed and depastured cows and sheep, from which they had milk, wool, calves, and lambs; that they also, during the said time had kept, fed, and depastured barren and unprofitable cattle of their own, and had taken in others to agist for hire; that the grass on the grass lands had been made into hay; that they had also several other titheable matters from their said lands in the *Old Inclosures*, the tithes of all which they ought to have set out in equal moieties, but that they had refused so to do; that the plaintiff had frequently applied to them to account for the same, which they had refused to do under several pretences of *modus*, &c. but the plaintiff insisted, that such payment of one shilling an acre in lieu of all tithes arising upon such lands was not to be considered as a *modus*, but only as a temporary composition, and also that they had never accepted of any such composition when the same were used as arable lands, but had taken the tithes of corn and grain in kind, or some composition for the

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against
WELBY.

that as the said parishes had never been perambulated, it could not be discovered how much of the *Inclosures* lay in one parish and how much in the other; that therefore one moiety of the tithes thereof had always been taken by the rector of *West Allington*; and the other moiety by the rector of *East Allington*;

that the tithes of the corn, grain, hay, &c. were due from *Michaelmas* 1775 to *Michaelmas* 1776;

that the said tithes ought to have been set out in equal moieties; that the defendants had refused so to do under pretence that there was a *modus* of 1s. an acre in lieu thereof; but that the rate had been, when the tithes were compounded for, at 4s. an acre;

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against
WILBY.

that the question
had been deter-
mined in former
causes.

same, at the rate of four shillings an acre or some such rate above one shilling an acre for such arable lands. The bill also charged that no *real compositions* were ever made, and that the payment of tithes in kind to the rectors of the said parishes in equal moieties for corn, grain, hay, milk, wool, calves, and lambs, and for the agistment of barren and unprofitable cattle upon *the Old Inclosures*, was, together with the payment of all other tithes in kind arising upon such lands, established by a decree made in this court in 1731, in a cause wherein *J. Cooper*, clerk, the rector of the parish of *East Allington*, was plaintiff, and *T. Williamson*, then occupier of certain lands within *the Old Inclosures*, was defendant (a). The bill further charged, that the plaintiffs, about *Michaelsmas* 1775, had given public notice within the said parishes respectively, that they should take all the tithes arising within *the Old Inclosures*, in the then ensuing year in kind; AND PRAYED, that the defendants might be decreed to account for the tithes on *the Old Inclosures* during the time aforesaid, and pay to them the value thereof in equal moieties, or in case it should appear, that any such tithes ever came to either of the said plaintiff's separately, as rectors of such respective parishes, or otherwise, that they might make them respectively satisfaction for the value thereof.

The defendants insist, that there was in the reign of *Queen Elizabeth* a real composition of 12d. an acre to the rector of *East Allington*, and 12d. an acre to the rector of *West Allington* in lieu of the tithes of *the Old Inclosure*.

The defendants admitted, that the plaintiffs were duly instituted and inducted into the parishes, medieties, and chapelry, as

(a) On the eighth of July 1726, *Trinity Term*, in the twelfth year of *George the First*, the case of *Brassley and Another v. Williamson and Others* came before the court of exchequer. The plaintiffs were rectors of *East Allington*, and *West Allington*, and demanded from the defendants the tithes for four years past, which had arisen on their several lands, in the said parishes respectively. The defendant *Williamson*, in his answer to *Brassley's* bill, said that all his lands lay in *West Allington*; and both the defendants said that twelvepence an acre had been always paid to the rectors of the said parishes in equal portions, in lieu of the tithes arising in *the Old Inclosures*. They also contended that no tithes were payable for the hay that had been mowed from the *Hades* and *Bawks* in the said parish, the plaintiffs having received the tithes of corn grown in *the open fields*, which were divided by the said *Hades* and *Bawks*. The Court directed an issue to try what parts of the defendant's lands in *the Old Inclosures* lay in each parish. But it does not appear that any further proceedings were had in the cause. On the twenty-first of February 1731, the cause of *Cooper v. Williamson* came before the

Court. The bill was filed by the rector of *West Allington*, to recover the tithes of the hay which the defendant had made since the year 1725, in the common fields, and on the *hades*, *bawks*, and land's ends, and also for a moiety of the tithes which had arisen since that year on *the Old Inclosures* in his possession, in the parish of *West Allington*. *Brassley* the rector of *East Allington*, who was a defendant to the bill, claimed his moiety of the tithes on *the Old Inclosures*. The defendant *Williamson* denied, that any tithes had ever been paid of hay growing on the *hades*, *bawks*, and land's ends, which in the common fields were left for the conveniency of ploughing; and he set forth the quantity he had made thereon; and also the number of acres which he occupied in *the Old Inclosures*; but said, that he could not tell the quantity which lay in each parish; and that no tithes in kind had ever been paid for the same. *Brassley*, the rector of *East Allington*, filed a cross bill against *Williamson* and the rector of *West Allington*. The Court ordered *Williamson* to come to a joint account for the tithes on *the Old Inclosures*, and pay one moiety thereof to each of the said rectors.

stated

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stated in the bill; that the township of *Allington* lay in the chapelry or parishes of *East Allington* and *West Allington*, and consisted of one thousand eight hundred acres; that one thousand acres thereof were open corn fields; that eight hundred acres, other part thereof, were inclosed upwards of one hundred years ago, and were known by the name of *the Old Inclosures*; that the chapelry of *East Allington* and the parish of *West Allington* adjoined together; that *the Old Inclosures* lay within both; but they denied, that it was impossible to know how many acres of *the Old Inclosures* lay in each parish or chapelry, or that it was apprehended that half of such old inclosures lay in *West Allington*, and the other half in *East Allington*, or that the occupiers of *the Old Inclosures* had constantly compounded with the rectors, and had paid one moiety to each rector; and they said, that an ancient customary payment had been made by the occupiers of *the Old Inclosures* to the rector of *Sedgbrook*, in lieu of all tithes arising thereon in the chapelry of *East Allington*; and another ancient customary payment by the proprietors of *the Old Inclosures* to the rector of *West Allington*, and accepted by him in lieu of all tithes arising on such of the said lands in the said *Old Inclosures* as were within that parish, while such lands respectively remained and had been used as meadow and pasture; and they denied, that any tithes in kind had ever been paid or set out for the said rectors, or either of them, upon any lands within *the Old Inclosures*. They also denied, that the plaintiffs were, to their knowledge, each entitled to receive a moiety of all tithes of corn, grain, hay, milk, wool, calves, lambs, or any other titheable matters, great or small, yearly arising in *the Old Inclosures* in kind, or any satisfaction in lieu thereof, except the ancient customary payments for the same, or that the present, or any former occupiers of lands therein, had constantly, and for time innumerial, paid to the rectors of the said chapelry, parish, or parishes *in moieties* or otherwise, all or any of the tithes, great or small, yearly arising upon such lands in kind, or any satisfaction in lieu thereof, except the ancient customary payments for the same; and they set forth an account of the lands occupied by them in *the Old Inclosures*, and also the several titheable matters which had arisen thereon, during the time demanded by the bill; and submitted to the Court, that whatever rights the plaintiff's might have either to tithes in kind, in respect of the lands in *the Old Inclosures*, or to any satisfaction in lieu thereof, such rights were separate and distinct within their respective parishes, chapelries, or rectories, and that therefore they could not be entitled under the agreement to equal halves; and they further said, that they could and would insist, in bar of such demand, on an ancient real composition made before the thirteenth year of the reign of *Queen Elizabeth*, between the owners of the said lands, and the then rector of the mediety of the said rectory of *Sedgbrook*, with the said chapel of *East Allington* annexed, with the

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against
WELBY.
The *modus*es
stated.

consent of the *Bishop of Lincoln*, and the patron of the said rectory: THAT IS TO SAY, that at *Lady Day, old stile*, in every year, there had been paid to the rector of the said parish or chapelry of *East Allington*, for the time being, until *Michaelmas* 1775, the sum of twelvepence, and no more, for every acre of such meadow and pasture land as aforesaid, and so in proportion for any less quantity than an acre, as a *modus* for and in lieu and satisfaction for all manner of tithes whatsoever yearly arising, renewing, or payable upon or from all such meadow and pasture land in the said *Old Inclosures*, when used as such, as were situate within the said chapelry or parish of *East Allington*: AND ALSO, that the occupiers of such meadow and pasture land, part of the said *Old Inclosures* as lay within the parish of *West Allington*, from the time of making the said *real composition*, and until *Michaelmas* 1775 constantly paid and been accustomed, and of right ought to pay yearly the like composition of twelvepence an acre at *Lady Day, old stile*, as above mentioned. They further said, that no variation or alteration had at any time been made in the said *modus*es, nor had any other sum been paid, but that the same had always been accepted by the former rectors until *Michaelmas* 1775; and insisted, that such payments had subsisted during such time as *modus*es, and not as *temporary compositions*, variable at pleasure; and that they were ready and willing to pay the said plaintiffs respectively such *modus* or yearly sum of twelvepence an acre for all meadow and pasture lands in the *Old Inclosures*, and submitted to the Court, that the plaintiffs could have no relief prayed by their bill, and that no right could be established to prevent the like questions being litigated between the future rectors, and the occupiers of the *Old Inclosures*; and therefore, that all disputes with respect to the said tithes, and more particularly with respect to the tithes of corn and grain, might be prevented, and the plaintiffs and their successors have their rights ascertained and established, it was incumbent on the plaintiffs to have the parochial limits and boundaries of the said *Old Inclosures* ascertained with as much exactness as the same could be done, and in such manner as to the Court should seem meet.

The cause
heard.

To which answers of the said defendants the plaintiffs replied; and the said defendants rejoined; and witnesses were examined on both sides; and upon hearing counsel for all parties; and on reading the depositions of *John Lely*; and an exhibit marked A.; and on debate of the matter;

The defendants
who had corn on
the *Old Inclosures*
decreed to pay the
tithes thereof.

THE COURT ordered the deputy remembrancer to take an account of what was due from the defendants *Welby* and *Hill*, for the tithes of corn which they respectively grew, reaped, and carried away from the lands in their respective occupations lying in the *Old Inclosures*, during the time demanded by the bill;

bill; it being admitted, that the other defendants did not grow any corn in *the Old Inclosures*, during the said time.

THE COURT further ordered the bill, so far as it sought an account from the said other defendants for tithes of corn, to be dismissed.

THE COURT further ordered, by consent, issues to try,

FIRST, “ Whether the occupiers for the time being of so much meadow and pasture land, part of the lands called or known by the name of *the Old Inclosure*, as lies or is situate within the parish and chapelry of *East Allington*, in the county of *Lincoln*, have, from time immemorial, constantly paid and been accustomed, and of right ought to pay yearly to the rector for the time being of the mediety of *Scdgbrook*, with the parish and chapelry of *East Allington* annexed, the sum of twelvepence, and no more, for every acre of the said meadow and pasture land when used as such, and so in proportion for any less quantity than an acre; and whether the said rector for the time being hath accepted the same, as a *modus* for and in lieu and satisfaction of all manner of tithes whatsoever yearly arising, renewing, or payable upon or from the said meadow and pasture land when used as such.”

SECONDLY, “ Whether the occupiers for the time being of such meadow and pasture land, part of the said lands called or known by the name of *the Old Inclosure*, as lies or is situate within the parish of *West Allington*, in the county of *Lincoln*, have, from time immemorial, constantly paid, and been accustomed, and of right ought to pay yearly to the rector for the time being of the said parish of *West Allington*, the sum of twelvepence, and no more, for every acre of the last mentioned meadow and pasture land, when used as such, and so in proportion for any less quantity than an acre; and whether the rector for the time being hath accepted the same as a *modus*, for and in lieu and satisfaction of all manner of tithes whatsoever yearly arising, renewing, or payable upon or from the said last mentioned meadow and pasture land when used as such.”

The defendants in equity to be plaintiffs at law; but by an order, the twenty-fifth day of *November 1780*, the time for trying the said issues was enlarged, the defendants undertaking peremptorily to try the same, &c.

The said issues were tried by a special jury of the county of *Lincoln*, and both the issues were found in favour of the occupiers; but MR. JUSTICE BULLER, who tried the issues, indorsed the *postea* in the following words: “ The land in question was proved to be now worth sixteen shillings an acre on an average, and that thirty years ago, it was worth only twelve shillings

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The bill dismissed against those who had no corn on *Old Inclosures*. Issues directed to try, 1st. Whether the occupiers of *Old Inclosures*, in *East Allington*, have immemorially paid 1s. an acre, in lieu of the tithes thereof.

ad. Whether the occupiers of *Old Inclosures*, in *West Allington*, have paid 1s. an acre, as a *modus* in lieu of the tithes thereof.

The occupiers to be plaintiffs at law.

A verdict found in favour of the occupiers; and also that the land was only worth 12s. an acre thirty years ago.

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against
WEIBY.

"an acre on an average. If the Court should be of opinion
"that upon this evidence the *modus* is rank, then a verdict is
"to be entered for the defendant."

The case argued
on the special
indorsement on
the *possea*.

The cause came on for further directions on the fourteenth day of *May* 1761, when upon reading the decree, *possea*, and indorsement; and hearing counsel for all parties, it was ordered to stand over for the further hearing of counsel, and the consideration of the Court on the said special indorsement; and on the twenty-sixth of *June* 1781, upon arguing the same by counsel two days; and on full debate of the matter;

A new trial ordered.

THE COURT ordered a new trial of the said issues.

A verdict found
in favour of the
rectors.

The issues were accordingly again tried, when a verdict was found in favour of the defendants in the said issues, and the cause came on for further directions on the fourteenth of *November* 1782, on the return of the said *possea*; when upon reading the said decretal order, dated the twenty-sixth of *June* 1781, and the said *possea*; and hearing counsel for all parties; and also on reading the decretal order, dated the twenty-first of *February* 1780;

The rectors ordered to pay those
who had no corn
on the *Inclosures*
their costs.

THE COURT ordered the plaintiffs to pay to the several defendants, against whom the said bill is directed to stand dismissed in regard to the demand of tithe corn, their costs of this suit in respect thereto.

The deputy ordered to take
an account of
the tithes of corn
in the *Old Inclosures*, and the
defendant to pay
the same in equal
medieties to the
rectors.

THE COURT further ordered the deputy remembrancer to take an account of what was due to the plaintiffs from the defendants for the tithes of the several other titheable matters which had arisen upon the *Old Inclosures*; and that the said defendants should pay to the plaintiffs what should appear due from them respectively thereon, in *equal moieties*, together with the plaintiff's costs of this suit to this time, both at law and in equity, except as to the particular matter wherein the said bill is directed to stand dismissed as aforesaid; the deputy to tax the said costs; and the consideration of subsequent costs, &c. to be reserved till after report.

SKYNNER, Chief Baron.
EYRE, Baron.
HOTHAM, Baron.
PERRY, Baron.

HILARY TERM
20. GEO. 3.

SPARKES against BARROW.

Gloucestershire, 21st February 1780.

Quere, Whether
the vicar of
Churcham, with
the chapel of
Bulley, in *Gloucestershire* annexed,
is entitled to the tithes of wood in the parish, except of the demesne lands of the manor of *Higbam*.

THE vicar of *Churcham*, with the chapel of *Bulley*, in the county of *Gloucester*, annexed, claimed all small tithes arising therein in kind, and stated, that the defendant *Barrow* had, for

several

several years been lessee or occupier of certain farms in the parish; that there were standing thereon wood which grew from the stools of oak, ash, beech, and other trees, and not from acorns, or other seeds; and that he had sold the wood to the defendant *Lucy*; that the defendant *Lucy* had cut down and sold the same, and disposed thereof without setting out the tithes to the plaintiff, or making him a satisfaction for the same. The bill therefore prayed an account and payment thereof.

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BARROW.

The defendant *Lucy* admitted, that, in 1774, he had purchased of the defendant *Barrow* a quantity of coppice wood standing upon an inclosed part of the demesne lands of the manor of *Churcham*, and formerly called *the Toft*, *the Furzey Grounds*, and *the Five Wells*, containing about thirty-eight acres, which consisted of oak, hazle, ash, yew, hawthorn, and black thorn; that the greater part of the oak grew from old stools, and some from acorns; that he purchased the said wood of *Barrow* for nine hundred and fifty pounds, tithe free.

The defendant *Barrow* denied, that the plaintiff was entitled to the tithes of wood in the parish; and insisted, that they belonged to the dean and chapter of *Gloucester*, as impropiators thereof, or to their lessee. He said, that it had been usual for the dean and chapter to grant the vicar a lease of the impropriation within the tithings of *Highnam*, *Linton*, and *Over*, and that by virtue thereof he was entitled to the rectorial tithes therein, excepting of those things which were discharged of tithes. He also said, that the dean and chapter had, in the year 1756, demised to him for twenty-one years all the rectory of *Churcham* with its rights, &c. extending into *Churcham* and *Bulley*, and all tithes, glebe lands, commodities, and other profits thereto belonging, except as therein is excepted, and also by another lease of the same date, for the like term, a moiety of the manor of *Churcham*, and of the said scite, manor, and farm house, with the rights, &c. thereto belonging, together with a moiety of the wood called *Bird Wood*, and all and singular the messuages, &c. to the said moiety belonging, in as ample a manner as the same had been granted by them to *W. Harris*, by indenture, dated the thirtieth of *August*, in the thirteenth year of *Charles the Second*, except as therein was excepted; that by virtue of the said leases he held the same, until the expiration thereof, at *Michaelmas* last. He admitted, that in the years 1772, 1773, and 1774, there was standing on the demised premises a large quantity of wood; underwood, and coppice wood, part of which grew from old stools, and other parts from acorns or other seeds; and that the same consisted of oak, ash, hazle, yew, and other trees of about twenty-six years growth; that in *October* 1774, he contracted with *Lucy* for the sale thereof; and also for a quantity of standards of near fifty years growth, and for many yew trees, hawthorns, and lops of old oak trees

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trees standing on certain inclosed grounds, part of *the demesne lands* of the said manor called *the Toft, the Furzey Grounds, and the Five Wells*, about thirty-eight acres; that he sold the same for nine hundred and fifty pounds, tithe free; and that the same was cut by the defendant *Lucy*, and applied by him to his own use; and he insisted, that the plaintiff was not entitled to the tithes thereof in kind, or to any satisfaction in lieu thereof; for that the abbot and convent or monastery of *Saint Peter Gloucester* were, long before and at the dissolution of the monasteries, in the thirty-first year of *Henry the Eighth*, seised of and entitled to *the manor of Churcham* and *the demesne lands* thereof, and of *Birdwood Wood*, and of the impropriate rectory or parsonage of *Churcham*, with the chapel of *Bulley* annexed, and all tithes and appurtenances, with the right of patronage and presentation of the said vicarage of *Churcham*; that by unity of possession of the said rectory, manor, and demesne lands, of which the same were parcel, or by some other lawful ways and means the said abbot and convent enjoyed *the demesne lands* and manor exempt from the payment of tithes, except such tithe thereof as the vicar was endowed with; that the said abbey was dissolved in thirty-first year of *Henry the Eighth*, and the possessions thereof, and of the said manor, *the demesne lands*, and *Birdwood Wood*, and the said rectory and advowson became vested in *Henry the Eighth*, who afterwards granted the same to the dean and chapter of *Gloucester*, and their successors for ever; that by virtue of such grant and the said act of parliament, the said dean and chapter were legally entitled thereto discharged of tithes; that the said king, before the said grant, had granted to *J. Arnold*, and his heirs, fifty loads of hard wood, to be yearly taken from *Birdwood*, which was then all woodland, but since cut up and become common; that the dean and chapter afterwards came to an agreement with the said *Arnold*, and by indenture, dated the first of *March*, in the thirty-fifth year of *Henry the Eighth*, they granted to him and his heirs part of *Birdwood Wood*, containing one hundred and fifty acres, in recompence for the said fifty loads of wood yearly; that such part of the said wood yearly so granted to him became afterwards vested in *Sir R. Cooke*; and that the said *Arnold*, and the several persons claiming under him, held the same discharged of tithes until the beginning of the reign of *Charles the First*, when *J. Brown*, then farmer of the rectory impropriate of *Churcham*, under the said dean and chapter, claimed tithes of part thereof, and commenced a suit in the ecclesiastical court of *Hereford* for that purpose; that the said *Sir R. Cooke* exhibited an information in his majesty's court of wards and liveries against the said *Brown*, insisting, that *Birdwood Wood*, and particularly the part thereof granted to *Arnold*, was discharged and exempt from tithes; that the said cause came on to be heard on the seventh of *February*, in the eighth year of *Charles the First*, when IT WAS ORDERED AND

DECREED

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DECREED by the court, that an injunction should issue to stay proceedings in the ecclesiastical court of *Hereford*; and that the said *Sir R. Cooke*, his heirs and assigns, should enjoy the said wood and wood ground freed and discharged of tithes; and he said, that such proceedings and decree were evidence of the said exemption, except of such tithes as the vicar was endowed with or entitled to; and that the rector or impropriator of the said parish, and not the vicar was entitled to the tithes of wood in the said parish, where such tithes were payable. He further said, that about sixty years ago the part of *Birdwood*, so granted to *Arnold*, was cut down by the said dean and chapter; and that no tithes for the said wood, or any payment or satisfaction in lieu thereof, were paid or demanded; that in 1741 he purchased of the then lessees of the other moiety of the said rectory impropriate their interest in the said lease, and considering himself entitled to the whole tithe wood through the parish, he claimed the tithes arising from some part of *Birdwood*, and instituted a suit in the consistory court of *Gloucester* against *T. Meyrick* for non-payment thereof; that *D. Cook*, owner of the said wood, and the said *Meyrick*, filed a bill in chancery against him, stating the several matters aforesaid respecting the exemption, and prayed an injunction to stay proceedings in the ecclesiastical court, and that such exemption might be established; that he, being advised that *Cooke* was entitled to such exemption, thought proper to drop such suit in the ecclesiastical court; that *Cooke* soon afterwards died, and the suit became abated; that afterwards, in 1751 and 1752, the whole of the said coppice wood belonging to *Cooke* was cut whilst *Mr. Whinfield* was vicar; and again in 1766, when the plaintiff was vicar; but that he, as lessee of the said rectory, did not demand, nor was any tithes thereof paid to the defendant, as lessee of the said impropriators, or to the said vicar; that in 1748 the coppice wood upon *the Tost, the Furzey Grounds, and the Five Wells*, of about seventeen or eighteen years growth, was cut and sold by the defendant to *T. C. Boovey* for two hundred pounds, without any mention of tithes, but who through mistake paid *Mr. Whinfield* the vicar the tithes thereof; and he insisted, that such payment being made without his consent, it ought not to effect his right. He said, that he had not any books, &c. whereby it would appear that the tithe of wood growing on any of the aforesaid lands had been paid to the vicar, or that any such tithes had been made to the plaintiff's predecessors, except in the single improper payment aforesaid.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and upon hearing counsel for all parties; and upon full debate;

THE COURT ordered an issue to try, "Whether the plaintiff *Edward Sparkes*, as late vicar of the parish of *Churcham*, in
" the

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“ the county of *Gloucester*, with the chapel of *Bulley* annexed,
“ was endowed, or otherwise entitled to the tithes of wood
“ within the said parish, except of *the demesne lands* of the manor
“ of *Highnam*.” To be tried by a special jury; the plaintiff
in equity to be plaintiff at law; the judge to indorse; and costs
and further directions to be reserved till after trial.

HILARY TERM
20. GEO. 3.

DAVENPORT against TAYLOR.

Nottinghamshire, 22d February 1780.

The vicar of *Ratcliffe upon Trent*,
in *Nottinghamshire*, claims the
small tithes, ex-
cept of wool

THE vicar of *Ratcliffe upon Trent*, in the county of *Nottingham*, claimed all small tithes, except of wool and lambs which had arisen on the defendants lands since the fifth of May 1777.

and lambs, in kind

The defendant *Bettison* says, that he occupies lands at *Holme Pierpoint*, and at *Lambcote*; but that neither of those places are

The defendant *J. Bettison* admitted, that he occupied one hundred and twenty acres of land at *Holme Pierpoint* and *Lambcote*; and insisted, that the said lands lay in the parish of *Holme Pierpoint*, and not in the parish of *Ratcliffe*; and that they were free from payment of all tithes both great and small,

in the parish of *Ratcliffe upon Trent*.

The defendant *Taylor* admits, that he holds land in the parish, but says, that the rectory belonged to the priory of *Tburgarton*; that it was given, on the dissolution of the priory, with all its tithes, great and small, by the crown, to *M. Stanhope*, who was to pay the vicar 30s a year in lieu of the small tithes.

The defendant *Taylor* admitted, that he occupied lands in the parish, but he said, that the rectory of *Ratcliffe upon Trent*, and the vicarage thereof, before the dissolution of the monasteries, belonged to the priory and convent of *Tburgarton*, in the said county of *Nottingham*; that at the time of the dissolution of the said monastery, both the rectory and vicarage became vested in THE CROWN; that *Queen Elizabeth*, by her letters patent, dated the third day of *April*, in the thirty-third year of her reign, granted for herself and successors to *M. Stanhope* and his heirs, all the rectory of *Ratcliffe upon Trent*, houses, glebe lands, and the tithes of hay, and grain, &c. that in the said grant a provision of thirty shillings a-year was made for the vicar in lieu of the several tithes claimed by the said bill; that by sundry conveyances the said rectory, vicarage, and tithes became the property of *the Dutchess of Kingston*; that the said stipend of thirty shillings a-year had been from time to time to the present time constantly paid to the vicar; that the tithes arising in the said vicarage, as well great as small, or some *modus* in lieu thereof, of right belonged to the said dutchess, as devisee in the will of the late duke; and that no part thereof belonged to the plaintiff; and he insisted on the following *moduses*, viz.
“ twopence for every new milch cow, and one penny for every
“ stroppe kept and fed in the said parish, or titheable places
“ thereof in lieu of the tithes of calves and milk; fourpence
“ for every mare and foal kept and fallen in the said parish, in
“ lieu of the tithes of colts; and sixpence for every swarm of

that there are
moduses payable
to the vicar
thereof in lieu
of the tithes of
milk, foal, colts,
and bees.

“ bees

" bees kept in the said parish or the titheable places thereof,
 " payable at *Lammis* in each year, in lieu of the tithes of bees,
 " wax, and honey."

DAVENPORT
 against
 TAYLOR.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and upon hearing counsel for all parties; and reading an order to prove exhibits; and reading, by consent, a copy of the endowment of the vicarage of *Radcliffe upon Trent*, in the county of *Nottingham*; and reading the deposition of *Samuel Shearing*; and on full debate;

The cause heard.

THE COURT ordered the deputy remembrancer to take an account of what was due from *J. Taylor*, for all the tithes demanded by the bill, except the several tithes which were covered by the *modus* insisted on in his answer, viz. twopence for every milch cow, and one penny for every stroppler, in lieu of the tithes of calves and milk; fourpence for every mare and foal in lieu of the tithe of colts; and sixpence for every swarm of bees in lieu of the tithes of wax and honey; and the said defendant to pay the plaintiff the same with his costs.

Taylor decreed to pay tithes in kind of the matters not covered by the *modus*;

THE COURT further ordered the said bill, so far as it sought an account of the titheable matters in kind covered by the said *modus*, to be dismissed with costs; and the deputy remembrancer to take an account of what was due for the said several *modus*, but without costs on either side.

and to pay for the other matters according to the *modus*.

THE COURT also directed an issue to try, " Whether the lands, admitted by the defendant *Jonas Bettison*, in his answer in this cause, to be in his occupation, or any and what part thereof are or is situate in the parish of *Ratcliffe upon Trent*, in the county of *Nottingham*," the plaintiff in equity to be the plaintiff at law.

An issue directed to try, whether *Holme Pierpoint* and *Lambcote* are in the parish of *Ratcliffe*.

The issue was tried, and the jury found, that the lands in question were not, nor was any part thereof in the parish of *Ratcliffe upon Trent*.

The jury find they are not.

THE COURT therefore, on the twenty-seventh of November 1780, ordered the bill to be dismissed as to *Jonas Bettison*, with costs.

The bill, as against *Bettison*, dismissed with costs.

HUTCHINS, D. D. against MAUGHAN.

Northumberland, 28th February 1780.

HILARY TERM
 20. GEO. 3.

THE plaintiffs, trustees under the will of the right honourable and reverend *Nathaniel*, late *Lord Crewe*, baron of *Stean*, and lord bishop of *Durham*, deceased, stated, that they had been for six years past seised in fee of all the tithes, great and small, arising in the chapelry of *Shotley*, in the county of *Northumberland*; that the defendants for three years past had occupied therein land, which was part of a piece of ground called *Balbeck Common*;

The owners of the tithes of the chapelry of *Shotley*, in *Northumberland*, claim the tithes corn and grass on *Balbeck Common*.

HUTCHINS
against
MAUGHAN.

Common; that they had respectively growing thereon oats, rye, barley, pease, and turnips, which they had reaped, pulled, and carried away without setting out or paying the tithes thereof. The bill therefore prayed an account and payment.

The defendants admit, that the plaintiffs are entitled to all tithes, except such as belong to the perpetual curacy of *Shotley*; and that they occupied lands on *Balbeck Common*; but they say, that the said common was waste ground; that by the 5. Geo. 3. it was inclosed for the purpose of being improved; and that by 2. & 3. Edw. 6. c. 13. it is exempted from tithes for seven years,

The defendants admitted, that the plaintiffs were owners of the tithes of corn, grain, and other predial and small tithes arising in the parish of *Shotley*, except such hay tithes, or *moduses* in lieu thereof, and small tithes, as the curates of the perpetual curacy of *Shotley* were entitled to; that they had in the said years severally occupied land in the said chapelry, part of a certain moor, common, or tract of waste land within, or parcel of the manor of *Balbeck*, called *Balbeck Common*, from which they had reaped and carried away corn, grain, pease, turnips, and meslin, without setting out or paying to the plaintiffs the tithes thereof, for that by 5. Geo. 3. for dividing and inclosing *Balbeck Common*, or the said tract of waste land in the barony or manor of *Balbeck*; and by the 2. & 3. Edward 6. c. 13. the several parcels of land so occupied by them respectively were exempted from the payment of tithes for seven years after the improvement thereof.

The cause heard.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and upon hearing counsel; and reading the depositions of several witnesses taken in the cause on both sides; and on full debate;

The bill retained until the ensuing *Michaelmas Term*, with liberty to the plaintiffs to bring an action at law.

THE COURT ordered the bill to be retained until *Michaelmas Term*, with liberty to the plaintiffs in the mean time to bring a joint action at law against all the defendants for the recovery of the tithes demanded by the bill upon 2. & 3. Edw. 6. The plaintiffs to state in such action that the lands are in the joint occupation of the defendants, and the defendants to admit the same, and that the plaintiffs are entitled to tithes within the chapelry of *Shotley*.

A verdict found for the defendants.

A verdict was found for the defendants; and on the seventh of *February* 1782, after hearing counsel on both sides; and on full debate of the matter;

The bill dismissed with costs.

THE COURT ordered the bill to be dismissed with costs, both at law and in equity.

SKYNNER, Chief Baron,
EYRE, Baron.
HOTHAM, Baron.

BRANFOOT *against* MOORE.*Durham, 25th February 1780.*

HILARY TERM

20. GEO. 3.

THE vicar of *Billingham*, in the bishoprick of *Durham*, claimed from the defendants the tithes of sheep, cows, wool, lambs, milk, calves, pigs, geese, turnips, and potatoes, for the year 1776.

The vicar of *Billingham*, in the bishoprick of *Durham*, is entitled to the tithes of milk, calves, wool, lambs, pigs, geese, turnips, and potatoes, arising in the township of *Billingham*, in kind.

The defendants admitted, that the plaintiff was vicar of *Billingham*, and entitled to the tithes of wool, lambs, calves, pigs, and hens, but denied, that he was entitled to the tithes of hay, hay grass, clover, clover seed, or to any other species of tithes than as aforesaid; and stated, that he and his predecessors had, for sixty years past, enjoyed a large quantity of glebe land within the township of *Billingham*, and had, down to *November 1775*, taken from every occupier of land in the parish twenty-five shillings a-year, in full satisfaction of all such small tithes as he was entitled to within the said township; that the dean and chapter of *Durham* were seised of the manor of *Billingham*, of the rectory, advowson, and right of presentation to the vicarage, of divers farms in the parish, and of the great and small tithes to which the plaintiff was not entitled, and particularly of the tithes of hay, hay clover, and grass; that the dean and chapter had, time immemorially, let out the same to divers tenants; that they had for all the time accepted and taken from the occupiers of the farms therein twenty shillings yearly, in lieu of the tithes of hay, hay grass, clover, and clover grass; and that the same had been paid down to the twenty-ninth of *September 1775*. The defendants further said, that the several yearly sums of money had been immemorially paid, and received by the said dean, &c. from the occupiers of lands within the said township, in lieu and full satisfaction of all small tithes, to which the vicar was not entitled, viz. for *Lady Lands*, three shillings and fourpence; for a common bakehouse, one pound; for ground called *Weathering Marsh*, one pound; for six acres of ground in *Frognell*, one pound, four shillings; for *Silver Lands*, two pounds, sixteen shillings, and tenpence; for *Meheta* or *Mathedra* in the village, two shillings and eightpence; for *the Brewery*, five shillings; for *Gibby Corn*, three shillings and fourpence; for *Haverton Hills*, one pound, thirteen shillings, and fourpence; for sixteen bushels of oats streaked, seven pounds, six shillings; for fifteen geese, three shillings and ninepence; for thirty cocks, five shillings; for two hundred and sixty eggs, one pound, three shillings; for *Barton*, three shillings and fourpence; and for twenty-six cottage hens, two shillings and one penny; that the said dean and chapter were also entitled to the tithes of corn and grain arising therein, and had always taken the same in kind, or some recompence in lieu thereof.

BRAWFOT
against
MOORE.

The plaintiff replied ; the defendant rejoined ; and witnesses were examined on the part of the plaintiff only ; and upon hearing counsel on both sides ; and reading an order to prove exhibits ; viz. the book brought from the archives of *Durham* ; an entry therein of the endowment of the vicarage of *Billingham*, intitled “ *Ordinario Vicarie de Billingham* ;” the answer ; and on full debate ;

THE COURT ordered the deputy remembrancer to take an account of the tithes of milk, calves, wool, lambs, pigs, geese, turnips, and potatoes, being the several species of tithes admitted by the answer to have been had by the defendants from their lands in question ; and the defendants to pay the plaintiff his costs.

SKYNNER, *Chief Baron.*
EYRE, *Baron.*
HOTHAM, *Baron.*

EASTER TERM
20. Geo. 3.

FIELD against ROBERTS ; *et è Contra.*

Gloucestershire, 13th April 1780.

Quære, whether the vicar of Mickleton, in Gloucestershire, is entitled to the tithes of hay and all other tithes except corn, wool, and lambs, in the hamlet of Clopton, in the said parish, or only to 3l. a-year, for the tithes of Upper Clopton ; to 5l. a-year for the tithes of Lower Clopton ; and to 1l. a-year for the tithes of the Park.

THE vicar of *Mickleton*, in the county of *Gloucester*, claimed the tithes of hay and all other tithes, except of corn, wool, and lambs, in kind, arising in the said parish, and in the hamlet of *Clopton* situate therein ; and insisted, as evidence of his right thereto, on an ancient terrier made the tenth day of *June* 1617, signed by the then vicar and churchwardens and the principal inhabitants of the parish ; on an ancient original deed or indenture of an award, dated the twentieth of *September* 1635, made and signed by *Godfrey*, then bishop of *Gloucester*, and *Francis Baber*, doctor in civil law, then chancellor of the said bishoprick, upon an order of reference sent to them by THE COURT OF STAR CHAMBER, in a cause there depending between *H. Huft*, clerk, then vicar of *Mickleton*, and *Sir E. Fisher, Knight*. lord of the manor of *Mickleton*, concerning the payment of tithes to the vicar ; on ancient original manuscripts or books written or kept by former vicars of the parish containing regular accounts of the tithes received, and of certain payments made in lieu of tithe hay and other matters, whereby it appeared, that from 1596 to 1635, the tithes of hay, colts, calves, pigs, milk, honey, wax, fruit, and divers other small tithes, or some compensation in lieu thereof, were paid to the then vicars in respect of the lands, or some part thereof.

The defendant insisted, that it appeared by an endowment of the vicarage in 1351, that the vicar was not endowed with any tithes in kind whatever in the parish, but only with a house, three acres of land, six cart loads of hay, and ten marks of sil-

ver

ver payable as therein mentioned ; and that in particular he was not entitled to tithes in kind for lands in the hamlet of *Clopton*, in the said parish.

FIELD
against
ROBERTS ;
et c. Contra.

The defendant *Roberts* said, that the hamlet of *Clopton*, although part of the parish of *Mickleton*, was a distinct lordship, and owed suit and service to *Lord Fortescue's* court held for the manor of *Ebrington*, in the said county ; that it was divided into two districts, the one called *Upper Clopton*, and the other *Lower Clopton* ; that all the lands in *Lower Clopton*, except sixty-four acres called *the Parks*, which were the property of the defendant *J. Roberts*, were the property of *Lord Viscount Wentworth* ; and he set up a *modus* of three pounds a-year, by half yearly payments at *Lady Day* and *Michaelmas*, old *style*, for the lands in the said district called *Upper Clopton* ; another *modus* of five pounds a-year for the lands in *Lower Clopton* (except the estates and premises called *the Parks*) ; and another *modus* of one pound a-year for the said estates and grounds called *the Parks* ; which he insisted had been paid to *Lady Day* 1777 ; and said, that he had offered to pay the plaintiff the same for the following years, but that he had refused to accept the same. He admitted the terrier, dated the tenth of *June* 1617, but insisted, that it did not affect the *modus*es, and said, that the award, dated the twenty-eighth of *September* 1635, was to the purport and effect as stated in the bill, but that he was a stranger to the authenticity of it, and submitted how far it ought to affect the defendants, the said *Sir E. Fisher*, being lord of the manor of *Mickleton*, and owner of the great tithes of *Clopton*, but not having any of the lands in *Clopton*, and the award not being made concerning the tithes of *Clopton*, but of the lands in *Mickleton* ;

The defendants filed their cross bill against the plaintiff, and his majesty's attorney general, the king being patron of the living, insisting on the *modus*es, and praying that they might be established.

The vicar, in answer to the cross bill, said, that the hamlet of *Clopton* was a distinct lordship, and owed suit and service to *Lord Fortescue's* court ; that there were many proprietors of lands there ; and that all or most of them paid their tithes as specified in *the titling book* mentioned ; that none of them paid tithes to *Lord Fortescue* ; that he knew not that there had been any custom to pay the said three several *modus*es, in lieu of tithes in kind ; but he admitted, that he had been vicar of the said parish ever since 1746, and that he had received the two payments of three pounds and five pounds yearly at *Lady Day*, and *Michaelmas*, in lieu of the tithes of the lands in *Clopton*, except *the Parks*, not as *modus*es, but as *temporary compositions* only, and said, that the one pound in lieu of the tithes of *the Parks* was not a *modus* or immemorial payment, but a *temporary composition*.

FIELD
against
ROBERTS;
et à Contra.

composition only; and that he had refused to receive any of them as *modus*; and he insisted, that he was entitled to tithes in kind within the said hamlet of *Clopton* by ancient endowment, prescription, or usage; and that it appeared by the terrier in the bishop's court at *Gloucester* of almost two hundred years old, that all manner of tithes within the parish of *Mickleton*, except of corn, wool, and lambs, belonged to the vicar. He said, that such tithes had been taken in kind by the former vicars of the parish, and that it appeared by an endowment of the said vicarage, that the vicar of *Mickleton* was endowed with tithes in kind within the said hamlet. He admitted, that he had the award, &c. in his custody; and that he had received the said three compositions down to 1777, but said, that he had given notice to dissolve and put an end to the said payments; and insisted, that he was by law entitled to put an end thereto, and to demand his tithes in kind.

The plaintiff in the original cause replied to the defendants' answer; and they rejoined; and the plaintiffs in *the cross cause* replied to the answer of the vicar; and he rejoined; and divers witnesses were examined on both sides; and by an order, dated the twenty-third of *November* 1779, it was ordered, that the said causes should be heard together, &c. when upon hearing counsel for all parties; and reading the proofs; and on full debate of the matter;

THE COURT ordered issues to try,

FIRST, "Whether there is, and, for time whereof the memory of man is not to the contrary, hath been a custom for the occupiers of lands within the hamlet of *Clopton* to pay the vicar of *Mickleton*, in the county of *Gloucester*, yearly and every year, the sum of three pounds, by half yearly payments at *Lady Day* and *Michaelmas*, old stile, for and in lieu of the tithes in kind arising from the lands and grounds within the hamlet or district of *Clopton* called *Upper Clopton*."

SECONDLY, "Whether there is, and, for time whereof the memory of man is not to the contrary, hath been a custom for the occupiers of lands within the said hamlet of *Clopton* to pay to the said vicar of *Mickleton*, yearly and every year, the sum of five pounds, by half yearly payments at *Lady Day* and *Michaelmas*, old stile, for and in lieu of the tithes in kind arising from the lands and grounds within the said hamlet or district called *Lower Clopton*, except the estate and premises called *the Parks*."

THIRDLY, "Whether there is, and, for time whereof the memory of man is not to the contrary, hath been a custom for the occupiers of lands within the said hamlet or district of *Clopton*

" Clopton to pay the said vicar of *Mickleton*, yearly and every
 " year, the sum of one pound, by half yearly payments at
 " *Lady Day* and *Michaelmas*, old stile, for and in lieu of the
 " tithes in kind arising from the estate and premises within
 " the said hamlet or district of *Clopton* called *the*
 " *Parkes*."

FIELD
 against
 ROBERTS;
 et è Contra.

The issues to be tried by a special jury; the judge to be at
 liberty to indorse, &c. and further directions to be reserved till
 after trial, &c.

PEACH against BIRCH; et è Contra.

EASTER TERM
 20. GEO. 3.

Staffordshire, 20th April 1780.

THE lessees of the dean and chapter of *Litchfield* claim
 the tithes of corn and hay arising in the towns and fields
 of *Harbourn* and *Smetbwick*.

The lessors of
 the impropiator
 of the rectory of
Harbourn, in *Staff-*

fordshire, claim the tithes of corn and hay in the townships of *Harbourn* and *Smetbwick*.

The defendant *Hanson* and others admitted, that the dean
 and chapter were entitled to the rectory, and the great tithes
 thereof, except of hay, within the towns and fields of *Harbourn*
 and *Smetbwick*; that *Margaret Pudsey* was, at and before the
 time of executing the assignment, entitled to the other undivid-
 ed third part; that she and *E. Peach* had respectively received
 such tithes; and that such leases had been granted as were
 stated in the bill. They also admitted, that they respectively
 occupied farms in the parish, and, setting forth the number of
 days math of grass mowed by them respectively, denied, that
 the said dean and chapter, or any of their lessees, had ever re-
 ceived any tithes of hay arising in the said parish, for that until
 about forty years ago, the several occupiers of meadow ground
 and other grass land mowed for hay therein had immemorially
 paid to the vicar, in lieu of the tithe of such hay, at *Lammas*
 yearly, twopence for every days math of meadow ground, and
 three halfpence for every day's math of their other grass land;
 and they insisted, that no other claim or demand for tithe hay
 had ever been made, except by the plaintiff since the obtaining
 the said lease; that a day's math is, according to the custom
 of the country, constantly estimated and reputed to be and
 contain three quarters of an acre; that they knew not, save
 by the bill, that the tithe of hay growing or arising within
 the said parish ever did belong to the said dean and
 chapter, or any of the lessees of the rectory; but they
 admitted, that the plaintiffs, as claiming under them, had
 lately caused applications to be made to the defendants for
 an account and satisfaction of the value of their tithe

The defendants
 insist on two *mo-*
duses payable to
 the vicar in lieu
 of tithe hay.

PEACH
against
BIRCH;
et c. Contra.

hay during the said time; and that they had refused to render any such account, or to make them any such satisfaction, because they humbly insisted, that their meadow and other grass lands within the said parish were excepted from the payment of tithe hay by the ancient prescriptive payments before set forth, in lieu thereof.

The defendant *Robinson* said, that the plaintiffs might be entitled to the rectory or parsonage of *Harbourn* in such shares and proportions as stated in the bill, and also to the tithes of corn within the said towns and fields of *Harbourn* and *Smetbwick*, under some lease or leases granted by the said dean and chapter; that he was vicar of *Harbourn*, and had been informed, that the tithe of hay, or some compensation in lieu thereof, was, from time immemorial, paid to the vicars of the said parish till about forty years ago, and since that time had been included in some gross annual sum, which had been paid to the vicar of the said parish; that he is entitled to the tithe of hay within the said parish, or to some payments in lieu thereof; that some money payment in gross was paid to his predecessor by the parishioners, in lieu of all demands by him as vicar; and that not being satisfied with the said payments, the parishioners agreed to increase his income by an addition of twenty pounds *per annum*.

The occupiers
file a cross bill
to establish the
modus.

The defendant *G. Birch* and others filed their *cross bill* against the said plaintiffs, the vicar, and the dean and chapter; and stated the *modus*, and said, that they had been accepted by all former vicars, until about forty years ago, when the *Reverend T. Green*, the then vicar, being desirous of avoiding the trouble of collecting his tithes, came to a verbal agreement, but without making any objection to the said ancient payments in lieu of tithe hay, or setting up any claim to tithe hay in kind, and the inhabitants agreed to augment it to twenty pounds *per annum*, to be paid out of the poor's rate. They further said, that a day's mow, according to the custom of the country, was reputed to contain three fourths of an acre; and prayed, that the *modus* might be established.

The lessees of the
rectory deny the
modus.

The defendant *Peach* and others stated their title and claim to the tithe hay, as in the original bill set forth, and, denying the existence of the said two customs, insisted on their right to the tithes of hay, as demanded by the bill.

The dean and
chapter deny the
existence of the
modus, and insist
that the tithe
hay belong to
them or to their
lessees of the rec-
tory in kind.

The dean and chapter said, that they were seised in their demesne as of fee, and in right of the cathedral church of *Litchfield*, of the rectory of *Harbourn*, and of all the tithes of corn, grain, and hay, and other great tithes therein; that they were also patrons of the vicarage of *Harbourn*; and that, being so seised, they had demised the same as before stated; but they

denied the existence of the two *modus*s; and insisted, that the tithe of hay had immemorially belonged to the dean and chapter of *Litchfield*; that they had always, by express words, demised to their lessees, as well the tithes of hay as of corn; and that the said lessees are well entitled thereto.

Plea
against
Bissh;
et Contra.

The vicar admitted, that some money payment in gross had been made to *Mr. Green* for some years before his death, in lieu of all his demands on the parish as vicar; that the said payments were continued to his successor; that he, the defendant, not being satisfied therewith, the parishioners had increased his income by the addition of twenty pounds a-year; that he had never heard of the *modus*s of twopence for every day's math of meadow, and three halfpence for every day's math of other grass land claimed, till the present bill was filed; and that no money payment in lieu of tithe hay was, to his knowledge, included in the gross sum paid to him till that time.

The vicar admits that gross sums have been paid in lieu of his demands on the parish.

The plaintiff in the original cause replied to the defendants' answers; the defendants rejoined; the plaintiffs in the cross cause replied; the defendants rejoined; and witnesses were examined on both sides; and upon hearing counsel for all parties in both causes; and reading the several proofs;

THE COURT ordered issues to try,

Issues directed to try,

FIRST, "Whether, from time beyond memory, the sum of twopence for every day's math of meadow ground mowed has been due and payable to the vicar of the parish of *Harbourn* for the time being at *Lammas* yearly, or so soon after as demanded, by the owners and occupiers of meadow ground mowed for hay within the said parish, in lieu of the tithe hay of their meadow grounds mowed."

1st. Whether 2d. for every day's math has been paid to the vicar in lieu of the tithes of meadow hay.

SECONDLY, "Whether, from time beyond memory, the sum of three halfpence for every day's math of other grass land mowed has been due and payable to the vicar of the parish of *Harbourn* for the time being at *Lammas* yearly, or so soon after as demanded, by the owners and occupiers of other grass land mowed for hay within the said parish, in lieu of the tithe hay of their other grass land mowed."

2d. Whether 1st. a day's math hath been paid in lieu of the tithes of other grass land.

To be tried by a special jury, and the judge at libery to indorse, &c. with the usual directions.

The cause came on for further directions on the eighth of December 1780, and the plaintiff's counsel in the cross cause informing the court that a trial of the said two issues had been had, and that the jurors had found the said issues in favour of the *modus*s, and praying, that they might be established;

A verdict found in favour of the *modus*s.

PEACH
against
BIRCH;
et à Contra.
The *modus* es-
tablished, and
the original bill
dismissed.

EASTER TERM
20. Geo. 3.

THE COURT, on reading the *poslea*, and hearing counsel for the defendants in the action, ordered *the original bill* to be dismissed; the two *modus*es to be established; and no costs to be paid on either side in either of the causes or at law; the parties having previous to trial entered into an agreement for that purpose.

CLARKE against BERRY.

Hertfordshire, 27th April 1780.

The rector of
Elstree, in Hert-
fordshire, claims
the great and
small tithes a-
rising on *Bore-*
ham Wood Com-
mon.

See Clarke v.
Roades, vol. 3.
page 488.

THE rector of *Elstree*, in the county of *Hertford*, claimed all tithes, great and small, arising therein, in kind; and stated, that there was within the said parish a large extent of very good pastureland called *Boreham Wood Common* (then inclosing by virtue of an act of parliament), and which contained one thousand acres, a greater quantity of land than all the other land in the parish; that by the custom of the parish, the said common was to be stocked only with cows breeding, and dry cattle of the female kind, geldings, and breeding mares, and with no sheep or other cattle; that the defendants occupied lands therein, and had depastured thereon sheep, which had produced lambs and wool; that they had kept hogs, pigeons, and poultry, and had from their gardens and orchards fruit, herbs, and vegetables; that they had bees which produced wax and honey; that they had depastured upon the said common, and on the said lands, geldings, breeding and milch cows, breeding mares, and divers other kinds of cattle; that they had made several thousand faggots from the produce of their lands, but had not since 1758 accounted with him for his tithes for the same. The bill therefore prayed an account from *Michaelmas* 1758 to *Michaelmas* then last past, and payment of what should appear due thereon.

The defendants
state the rights
of the said com-
mon.

The defendants admitted, that the plaintiff was rector of the parish, and entitled (to the time limited by the act of parliament) to receive tithes in kind of all titheable matters arising therein; that there was within the said parish a very large extent of ground called *Boreham Wood Common*; that the custom for feeding therein was as set out in the bill; but they said, that a considerable part of the said common was entirely covered with bushes; and that the herbage thereof was of no great value; and they set forth respectively the times during which they had occupied lands in the parish.

The defendant
Weeden says, that
he had paid his
tithes to the year
1774; and sub-
mits, whether he
ought to discover
any titheable
matters an-
tecedent to that
time.

The defendant *Weeden* said, that for the year 1773 he had compounded with and paid to the plaintiff for all manner of tithes, great and small, arising upon the lands occupied by him therein; and submitted, whether he was compellable, at this distance of time, to discover the particular titheable matters he had in the parish antecedent to the year 1774, in which year, and in 1775, the plaintiff had taken all his great tithes in kind; but

but he admitted, that he had not made the plaintiff any satisfaction for the *small tithes* arising therefrom in the said two years ; and set forth the best account he was able ; and said, that he had always been ready to make him a reasonable satisfaction ; but that he having demanded after the rate of one shilling in the pound for such small tithes, he, the defendant, had refused to pay the same, as being unreasonable, and on the twenty-seventh of *February* 1776 caused six shillings to be tendered to him as a composition of the said small tithes after the rate of three-pence in the pound upon the yearly rent of the lands, which was more than the value of his said small tithes for those years, but which the plaintiff had refused to accept. He also said, that he had compounded with and paid the plaintiff for the great and small tithes which had arisen upon his lands for 1776.

CLARKE
against
BERRY.

All the defendants insisted, that the plaintiff was not entitled to any tithe of herbage or agistment for barren or unprofitable cattle depastured on *Boreham Wood Common*, not only because he had never demanded the same until a short time before filing his bill, but also because he had turned his cattle to depasture on the said common ; and they put in answers much to the same effect as the defendant *Weeden* had done.

All the defendants insist, that the plaintiff is not entitled to the tithes of the *Common*, because he had also turned his cattle thereon.

The plaintiff replied ; the defendants rejoined ; and witnesses were examined on both sides ; and upon hearing counsel for the said parties ;

The cause heard.

THE COURT ordered the bill to be dismissed as against *J. Bartlett, J. Epgrove, J. Osmond, and J. Wiblin*, but without costs (the said defendants put in no answer) ; and the deputy remembrancer to take an account of what was due from *J. Berry* and others for the small tithes which had arisen on their lands for the space of six years preceding the filing the bill : costs and further directions to be reserved till after the report.

The bill dismissed as to some of the defendants ; and others ordered to pay the small tithes for the six years preceding the bill.

JONES against SNOW.

TRIN. TERM,
20. GEO. 3.

Worcestershire, 6th June 1780.

THE rector of *Skipston upon Stour*, with the chapel or parish of *Tidmington*, in the county of *Worcester*, annexed, both in the diocese of *Worcester*, claimed all tithes, both great and small, and other dues arising therein, in kind ; and stated, that the defendants in 1778 occupied farms in the said chapelry, and had yearly thereon wheat, barley, oats, pease, hay, clover, clover seed, cows, calves, milk, barren and unprofitable cattle, the tithes of which they had refused to pay, pretending that he was bound by a former agreement made in the year 1652 between several persons and a former rector ; the contrary of which the

The rector of *Skipston upon Stour*, with the chapelry of *Tidmington*, in *Worcestershire*, annexed, is entitled to the great and small tithes of the chapelry and parish in kind, notwithstanding the agreement

made in the year 1652 to compound ; and the statute 6 Geo. 1 to divide the said parish plaintiff

JONES
against
SNOW.

plaintiff charged to be true ; and insisted, that he was entitled to receive the tithes in kind. The bill therefore prayed an account and payment of the tithes of the several matters had by them in 1778 within the said rectory and chapelry.

The defendants admitted, that the plaintiff was rector of *Shipston*, with the chapelry of *Tidmington* thereto annexed ; that he had been so ever since 1757 ; that in 1778 they severally occupied lands in the said chapelry ; and said, that they had not kept any regular account of the several titheable matters which had arisen thereon in the said year, the plaintiff having, ever since his induction, contented himself with accepting from them certain *ancient compositions* in lieu thereof, in the same manner as his predecessors, beyond the memory of man, had done ; that no tithes in kind, during the memory of man, had ever been taken in kind by the plaintiff or his predecessors ; that they had offered to pay him such composition ; but that if he was entitled to tithes in kind, they were willing to be examined upon interrogatories as to the quantities and values thereof, and to render him a satisfaction for the same. They further said, that previous to 6. Geo. 1. the whole parish went by the name of the *rectory of Tredmington* ; that it was, by that statute, divided into three parts ; that the townships of *Shipston* and *Tidmington* made one distinct parish, and the rectory of *Shipston cum Capella de Tidmington* another separate parish ; that previous to the year 1652, the rectory of *Shipston*, with the chapel of *Tidmington*, and the two portions of the rectory of *Tidmington*, were entitled to the tithes of all lands in *Tidmington* ; that *William Durham*, clerk, as rector of the said rectory, was entitled to such tithes, or some ancient payment in lieu thereof ; that in the said year, *Richard Walker*, lord of the manor, and *J. Wells* and other owners of lands within the said parish, on the twelfth of *September* 1652, entered into an agreement for the payment or composition for their said tithes as set forth, as well as other agreements in their said answer ; that in 1654 a suit was instituted in chancery by the said *Walker* against the said *Durham*, &c. for establishing the same ; that in 1656, a decree was made for confirming the same ; that from the passing of the said act, the plaintiff and his predecessors, to the end of the year 1777, had enjoyed the said allotments of land, and received the sums mentioned in the said agreements in satisfaction of all tithes ; that the lands purchased by them were in full confidence that the said agreement was binding, and being confirmed by the said decree should not be broke in upon, but confirmed by the decree of this court, especially as the lands belonging to the rectory of *Tredmington*, allotted to the then rector or curate of *Tredmington*, had ever since been enjoyed by the respective rectors and their successors, and now by the plaintiff, as part of his portion under the parliamentary portion.

The

The plaintiff replied; the defendant rejoined; and witnesses were examined on the part of the defendants; and upon hearing counsel for both sides; and on debate of the matter; and reading a writ of execution of a decree in the court of chancery, dated the twenty-eighth of *November 1757*, confirming an agreement in 1652; a copy of an act of parliament made in the sixth year of *George the First* for dividing *Tredmington* into three parts; and also the depositions of several witnesses;

JONES
against
SNOW.

THE COURT ordered the defendants to account for the value of the tithes in kind which they had within the said parish of *Shipston* during the time demanded by the bill.

SKYNNER, *Chief Baron.*
HOTHAM, *Baron.*
PERRY, *Baron.*

HUTCHINS *against* FULL.

Devonshire, 23d June 1780.

TRIN. TERM,
20. GEO. 3.

THE bill stated, that the plaintiff, in *December 1768*, was presented to the rectory of *Dittisham*, in the county of *Devon*; that he thereby became entitled to all tithes, both great and small, in kind; that the defendants had severally, during the said time, occupied farms therein; that they had kept thereon several milch cows, from which they had milk; and that the plaintiff, as rector, was entitled to the tithe of milk of the whole herd of cows belonging to the defendants, and which they ought regularly to have set out; but that they had neglected so to do, or to make him any recompence for the same. The bill therefore prayed, that they might account, and pay what should appear due thereon.

The rector of *Dittisham*, in *Devonshire*, claims the tithes of milk in kind.
S. C. Rayner.
See the other cause to establish *modus*, Mich. Term, 22. Geo. 3.

The defendants admitted, that the plaintiff was rector of *Dittisham*, and entitled to all tithes, great and small, arising therein in kind. They then set out their respective farms, the number of acres, the yearly rents thereof, and the number of cows that had been milch, or had become dry, or were put up in each year; the quantity of tithe milk the plaintiff had taken away; and the manner in which they had set out the same; and denied that they had refused to set out the said tithe milk fairly and legally; but insisted, that they had constantly set out the same agreeable to the custom immemorially used in the parish, and by which mode they averred that the plaintiff would have the tenth meal of milk of each cow, morning and evening, throughout the parish, as the cows came in to milch, and the defendants be enabled to have milk for the rearing of their calves and the use of their families, which would not be the case if they were to set out the whole of their milk every tenth day,

The defendants insist, that they had set out the tithe milk fairly, according to the custom of the parish; and that the plaintiff had neglected to take it away.

or

HUTCHINA
against
FULL.

or the tenth meal of each of their respective cows at once. They therefore hoped, that such an immemorial custom would be established, and that they should not be decreed to account for the tithes of milk, which they had fairly set out, and which the plaintiff might, except from his own neglect, have taken away.

The cause
heard.

The plaintiff replied; the defendants rejoined; and witnesses were examined only on the part of the defendants; and upon hearing counsel on both sides; and reading on behalf of the defendants the several proofs taken in the cause; and on full debate of the matter;

The tithes of
milk decreed.

THE COURT ordered the deputy to take an account of what was due to the plaintiff from the several defendants for the tithe in kind of milk during the time demanded by the bill; and that they do pay him his costs.

The defendants
appeal to the
house of lords,
but the appeal is
dismissed.

The report of
what was due
confirmed.

L. T. Full and others, the farmers and occupiers, appealed to the house of lords against the said decree; but on the thirteenth of *June* 1782, the appeal was dismissed, with one hundred pounds costs; and on the twenty-sixth of *February* 1787, the deputy remembrancer's report, dated the twelfth of *February* 1787, was confirmed, and the defendants ordered to pay the several sums of money reported due, with costs.

EYRE, *Chief Baron.*
HOTHAM, *Baron.*
THOMSON, *Baron.*

MICH. TERM,
21. GEO. 3.

HOWES against ROOKE.

Hampshire, 17th November 1780.

The vicar of
Fordingbridge,
with the cha-
pelry of *Ibsley*,
in *Hampshire*,
annexed, claims
the small tithes
of the parish
and chapelry in

THE vicar of *Fordingbridge*, with the chapel of *Ibsley*, in the county of *Hants*, annexed, claimed all the small tithes arising in the said parish and chapelry, and all tithes, great as well as small, arising on divers lands in the parish, particularly the tithes of hay on the lands called *Godsbill* and *Fold* since the twenty-fifth of *March* 1774, when he was promoted to the vicarage.

kind; the great and small tithes in the townships of *Godsbill* and *Fold*, particularly the tithe hay of *Hil's Mead Meadow*, and of the agistment of barren cattle on *Burgate Farm*.

The defendants
insist on *modus*
in lieu of the
tithes of milk,
calves, lambs,
wool, agistment,
colts, pigs, bar-
tons, gardens, orchards, and *Easter* offerings.

The defendants admitted, that the plaintiff was vicar, and entitled to all small tithes arising in the said parish and chapelry, or to *modus* in lieu thereof; that they had severally occupied the farms mentioned in the bill, except *the Dovehouse*; and they set up the following *modus*, viz. one penny a milch cow or heifer,

at *Lady Day* yearly, in lieu of tithe milk; one penny a calf bred for the dairy or stock, at the *Lady Day* next following the falling thereof; four shillings for every tenth calf not bred for the dairy or stock, at *Lady Day* next after the falling thereof; sixpence for every calf not bred for the dairy or stock, where the number was less than ten, and for all odd calves above the tenth, and under the twentieth, or any other greater number of tens; two shillings for every tenth lamb bred for stock, payable on the *first of May* next after the falling thereof; two shillings and sixpence for every tenth lamb not bred for stock, payable on the same day; three halfpence for and in lieu of the tithe of wool of each sheep sheared, where such sheep had been depastured therein during the whole year preceding the time of shearing; one penny farthing, in lieu of the tithe of the wool of such sheep sheared within the said parish and chapelry, which had been depastured part of the year in *the New Forest*, or elsewhere out of the said parish; one penny for the agistment of each sheep not yielding lamb or wool, and agisted from lands in the parish from *Michaelmas* till *Lady Day*, or during any part of that time; all the said *modus*es in lieu of tithe of wool and of agistment of unprofitable sheep to be paid at *Lady Day* yearly; sixpence for every colt fallen in the parish; twopence for every tenth pig farrowed in the parish; one penny for every backside or *barton* in the parish; one penny for every garden; and twopence for every orchard in the parish; the *modus*es for bartons, gardens, and orchards payable at *Lady Day* yearly (a).

Howes
against
Rooke.

The defendant *H. Rooke* said, that within the tithing of *Godsbill* and in *Folds*, or in one of them, there is a meadow, containing about thirty acres, called *Hilly Mead*, part of the lands in his occupation; and that the occupiers thereof had immemorially paid to the said vicar or his lessee one penny an acre, in lieu of all tithes arising on the said mead.

The defendant *Rooke* insists on a *modus* of 1d. an acre, in lieu of the tithe hay of *Hilly Mead*.

The defendant *V. Wing* said, that there had been immemorially paid by the occupier of *Burgate Farm* to the said vicar or his lessee, twenty-one shillings, in lieu of all agistment of tithes of horses, mares, geldings, colts, and cattle agisted for hire

The defendant *Wing* insists on a *modus* of 21s. a-year, in lieu of the agistment tithe of *Burgate Farm*.

(a) On the twenty-sixth of April 1697, Easter Term, in the ninth year of *William the Third*, the case of *Hull v. Moore* came before the court of exchequer. The bill was filed by the then vicar of *Fordingbridge* to recover tithes of wheat, rye, barley, calves, milk, pigs, the agistment of barren and unprofitable cattle, and other matters. The defendant admitted, that the plaintiff was vicar, and entitled to some great tithes, and to all the small tithes of the parish; that he had occupied the lands mentioned in the bill, and had had the tithable

matters therein described thereon. THE COURT decreed the defendant to pay the plaintiff his *Easter* offerings, tithe pig, and also the tithes of corn and grain and other tithes due for the time demanded by the bill, "together with the several *modus*es in the answer mentioned." And on the seventh of June 1697, the deputy's report was confirmed, and the defendant ordered to pay six pounds, fifteen shillings, and elevenpence, the sum reported due, for his tithes.

upon

Howas
against
Rooke.

upon any of the lands in the said parish and chapelry belonging to *Burgate Farm* aforesaid.

qd. a head for
Easter offerings.

The defendants
say, that the tithe
of corn and hay
belong to *King's
College*, in *Cam-
bridge*.

All the defendants said, that fourpence had been immemorially paid by the head of each family residing in the parish and chapelry, in lieu of *Easter offerings*. They also said, that the tithes of corn, grain, hay, clover, and other grafs growing in the parish and chapelry belonged to *King's College*, in *Cambridge*, except upon some particular estates in the township of *Godsbill*, and some other estates in the parish.

The defendant
Rooke says, that
he had paid all
his tithes, except
for *Hilly Mead*.

The defendant *H. Rooke* said, that he did not insist on any *modus* in lieu of tithe hay, except in respect of *Hilly Mead Meadow*; and that he had paid all other tithes of hay and grafs, except for the said mead.

The parties com-
promise themat-
ers.

The plaintiff replied, and the defendants rejoined; but the Court was informed, that the plaintiff and the defendants had, on the fifteenth day of *November 1980*, entered into an agreement for compromising the matters in difference between them.

The *moduses* in
lieu of milk,
lambs, wool,
bartons, gardens,
orchards, *Easter*
offerings, and the
tithe hay of *Hil-
ly Mead*, decreed
according to the
agreement.

THE COURT therefore ordered, &c. by consent of all parties, and in pursuance of the said agreement, "That the *moduses* of
" one penny for and in lieu of the tithe milk of each cow or hei-
" fer yielding milk yearly due and payable at *Lady Day*; of one
" penny for and in lieu of the tithe of agistment of each sheep
" not yielding lamb or wool within the parish, and agisted on
" lands within the parish from *Michaelmas* to *Lady Day*, or
" during any part of that time, payable at *Lady Day* yearly;
" of one penny for every backside or barton within the said
" parish, payable at *Lady Day* yearly; of one penny for every
" garden within the said parish, payable at *Lady Day* yearly;
" of fourpence for *Easter* offerings for each house or family;
" and of one penny for every acre of land lying in the said
" meadow, called *Hilly Mead*, within the tithing of *Godsbill* and
" *Folds*, or in one of them, mentioned and described in the
" answer of the defendant *H. Rooke*, for and in lieu of all tithes
" arising from or in respect of the said meadow, payable at
" *Lady Day* yearly;" be established according to the said
agreement; that the other *moduses* in lieu of the tithes in kind
of calves, lambs, wool, colts, and agistment tithes of all horses,
mares, geldings, colts, and cattle agisted for hire by the
occupier of *Burgate Farm* on the lands belonging to the said farm
be disallowed; that the tithes in kind, or a recompence for the
tithe for which such *moduses* are disallowed as aforesaid, be for
the future paid by the defendants to the vicar, pursuant to the
said agreement; but that the payments set up for the same by
the defendants in their answers be taken and accepted by the
plaintiff in lieu of the tithes of all the titheable matters for which
they are so set up, for the time past, and until *Lady Day 1781*;
and

The *moduses* in
lieu of tithe
calves, lambs,
wool, colts, and
the agistment
tithes of *Burgate
Farm*, disallow-
ed;

tithe to be paid,
as stated, to *La-
dy Day 1781*.

and that each party shall pay his own costs, as well of this suit as of the suit instituted by the plaintiff against *Elizabeth Smith* in the spiritual court; that in case the parties shall not be able to agree, so as to settle the *quantum* of the several titheable matters and things to *Lady Day* 1781, the deputy remembrancer shall take the account under and by virtue of the said agreement; that the time for taking tithe of calves, pigs, lambs, and value of the calf when titheable, shall be ascertained by two farmers not inhabitants or parishioners of *Fordingbridge*, one to be chosen by each party; and if these two cannot agree, they should fix on a third person, not a parishioner or inhabitant of *Fordingbridge* to ascertain the same; and that the decision of two out of the three shall be final and conclusive on each party; and that all further proceedings in the said suit and in the spiritual court be stayed.

Howes
against
Rooks.

The deputy to take the account, if the parties cannot agree on the sums due; the time of taking the tithes of calves, pigs, and lambs to be mentioned by the arbitrators; all proceedings to cease.

ADAMS against WALLER; *et è Contra*.

HILARY TERM
21. GEO. 3.

Middlesex, 29th January 1781.

THE bill stated, that the parish of *Kensington*, in the county of *Middlesex*, consisted of a rectory and vicarage; that the vicarage was endowed; that the vicar thereof was, by endowment, prescription, or otherwise, entitled to a moiety of the tithes of corn, grain, and hay; to the whole of the *small tithes*; and all offerings, oblations, obventions, and other vicarial dues, yearly arising within the whole of the parish, particularly to the tithes of wool, lambs, milk, eggs, fruit, herbs, cabbages, potatoes, turnips, garden stuff, plants, flowers raised for sale, pines, melons, grapes, hot-house plants, flower roots, hemp, flax, and honey; that the defendant *Waller* was, in the year 1770, collated to the said vicarage, and had ever since been vicar thereof, and entitled to the tithes aforesaid; that he shortly before the eighth of *September* 1777 let the tithes of that part of the parish which lies on the *North Side* of the king's highway leading from *Hyde Park Corner* to *Counter's Bridge* to *J. Hall*, to whom the plaintiff and other occupiers of farms in that part of the parish paid their tithes after the rate of twelve shillings an acre yearly for the arable land, and seven shillings an acre yearly for the grass land; that he, the defendant *Waller*, also shortly before the said eighth day of *September* 1777, agreed to let the tithes of the other part of the parish, which lies on the *South Side* of the king's highway leading from *Hyde Park Corner* to *Counter's Bridge* (which consisted chiefly of nurseries and garden grounds, and were of much greater yearly value to the occupiers than arable and meadow grounds) to

The bill states, that *Waller*, the vicar of *Kensington*, was entitled to a moiety of the great tithes, and to the whole of the *small tithes* of the parish; that on the eighth of *September* 1777, he agreed to let the tithes on the *North Side* of the road to *J. Hall*, and the tithes on the *South Side* of the road to *B. Bryan*;

ADAMS
against
WALLER;
et c. Contra.
that he, *Waller*,
delivered a no-
tice on the 12th
of September
1777, dated the
8th, to the oc-
cupiers, signify-
ing, that he had
let the said
tithes to *Bryan*,
and that their
compositions
would cease on
the *Michaelmas*
Day ensuing;
that *Bryan*, on
the 20th and
27th of Septem-
ber 1777, deli-
vered a like no-
tice to them,
dated the 10th
of September;
that the lease
from *Waller* to
Bryan was dated
the 27th of
September 1777,
to commence
from the *Micha-*
elmas following;
that *Bryan* as-
signed the said
lease to the
plaintiff *Adams*;
that *Adams*, on
the 27th of Sep-
tember 1777,
gave the occu-
piers notice to
pay their tithes
to him in kind
from *Michaelmas*
Day ensuing;
that the occu-
piers were nur-
sery men and
gardeners, and
had plants,
fruits, milk, and
calves on their
grounds;

to the defendant *B. Bryan*; that in consequence of such agree-
ment, he, the defendant *Waller*, delivered a notice on the twelfth
of September 1777, dated the eighth of the said month, to each
of the defendants and others occupiers of nursery grounds and
lands in that part of the parish which lies on the *South Side*
of the king's highway aforesaid, addressed to them respectively
as follows: "Please to take notice, that the composition to be paid
" for the tithes of land in your occupation will determine on
" *Michaelmas Day* now next ensuing; and that I have let
" such tithes to *Benjamin Bryan* from that day, to whom you
" are hereby desired to account for the same;" that *B. Bryan*,
between the twentieth and twenty-seventh days of the said
September, delivered to each of the defendants and other occu-
piers of the said nursery grounds and lands, a notice, dated the
tenth day of the said month, signed by him, and addressed to
the said defendants and others respectively, as follows: "Please
" to take notice, that I shall take the tithes in kind for the land
" you hold in the parish of *Kensington* from *Michaelmas* next;"
that *Waller*, in consequence of such agreement, by indenture
dated the twenty-seventh day of the said September, demised to
Bryan, his executors, &c. from *Michaelmas* 1777, for the term
of six years, all his said tithes yearly arising within that part of
the parish which lies on the *South Side* as aforesaid, at the yearly
rent of two hundred and eighty pounds, with certain provisoes
as therein mentioned; that the plaintiff soon afterwards agreed
with *Bryan* for an assignment of such lease; that the said plaintiff,
on or about the twenty-seventh of the said September, delivered to
each of the said defendants and other occupiers of nursery
grounds and lands in that part of the said parish a notice
in writing signed by him, and addressed to the said defendants
and others, respectively dated on or about the twenty-seventh
day of the said September, as follows: "SIR, Having taken your
" tithe of *Mr. Bryan*, I hereby give you notice not to move
" any of your crops after *Michaelmas Day* next ensuing the date
" hereof, without giving notice that the same may be properly
" tithed; and for your conveniency, I will accept of notice sent
" for me at *Mr. Bryan's* house, in *Earl's Court*, for to come and
" tithe the same." The bill then stated, that the defendants
before *Michaelmas* 1777, and ever since, had occupied lands,
particularly nursery grounds and gardens within that part of
the parish that lies on the *South Side* as aforesaid; that they
had respectively cut, plucked, gathered, pulled up, received, had,
and taken, upon and from the said lands, nursery grounds, and
gardens, divers quantities of trees, shrubs, fruit, herbs, greens,
cabbages, collards, potatoes, turnips, and various other kinds of
garden stuff, plants, roots, flowers for sale, pines, melons,
grapes, hothouse plants, and flower roots of various kind, hemp,
and flax; that they had also since such time kept and fed on the
said lands cows, which yielded and produced milk and calves;
and

and had also kept ewes and other sheep, from which they had lambs and wool; that they had geese, ducks, hens, and other poultry, which laid eggs; that they also had kept several hives of bees, which produced honey; and had also divers other titheable matters and things from the said lands, nursery, and garden grounds, the tithes of which were accounted small tithes; that the tithes of the said matters and things ought to have been set out for the plaintiff, who had applied to them to set out and pay him the said tithes, or make him a satisfaction for the same, which they had refused to do, under some agreements with the defendant *Waller*, on the second of *October* 1771 and the seventeenth of *January* 1772, as stated in the bill; but that the said agreements were only verbal, and not reduced into writing, and were only for one year, and for so much longer as he and they should chuse. The bill then charged, that the defendant *Henry Hutchins* had entered into an agreement with *Waller* on the twenty-third day of *January* 1772 (subsequent to the date of the said pretended agreement) to take all the tithes of the land then occupied by him from *Michaelmas* 1771 to *Michaelmas* 1772, at the yearly rent of thirty-four pounds, nineteen shillings, and had ever since paid that sum to *Waller*; that supposing such prior agreement to have been good, it was waived by such subsequent agreement; that in *July* or *August* 1777, *Hutchins* desired *Waller* to compound with him for his tithes, and requested that he would not collect them in kind; that *Waller* then told him, it was his own fault that he had not an agreement before for a term of years, or during his incumbency. The bill then further charged, that the said agreements, being during pleasure, had been determined by the aforesaid notice; AND PRAYED, that the defendants might account with the plaintiff for the single value of the tithes, which, since the twenty-fourth day of *March* 1778, had arisen from the lands in their respective occupations, and pay him what should appear due on such account.

ADAMS
against
WALLER;
et c. Contra.

that they had refused to pay the plaintiff *Adams* the tithes thereof, under a pretence that their composition with *Waller* was not determined; that the said pretended agreements were merely verbal, and determined by the said notices;

and prays that the single value thereof may be decreed.

The defendant *Rouse* and several others admitted, that the parish of *Kenfington* consisted of a rectory and a vicarage; that the vicarage was endowed, and the vicar thereof entitled to the tithes of corn, grain, hay, small tithes, offerings, oblations, and other vicarial dues, yearly arising in that part of the parish which lies on the *South Side* as aforesaid, particularly to the tithes of wool, lambs, milk, eggs, fruit, herbs, garden stuff, plants, flowers raised for sale, hemp, flax, and honey; that the defendant *Waller* was, in the year 1770, presented thereto, and had ever since been vicar thereof; and that the leases had been made, and the notices given, as stated in the bill, excepting that such notices were delivered to each of them on *Michaelmas Day* 1777, and not before, as they verily believed: and they severally set forth a particular account of the lands and grounds by them

The defendant *Rouse* and others admit the leases and notices as stated in the bill; and say,

that such notices were not served on them until *Michaelmas Day* 1777.

ADAMS
against
WALLER;
et c. Contra.

occupied within the parish before and since *Michaelmas* 1777, and how and in what manner such lands and grounds had been used and occupied during that time.

The defendants *Hutchins*, *Williamson*, and *Hewitt* say, that the occupiers of nursery grounds in the parish of *Kensington* had, for fifty years, paid a composition of 6s. an acre, in lieu of the tithes thereof; that *Waller*, upon his being appointed to the vicarage, agreed to accept 8s. 6d. an acre, and signified the same under his receipt for the tithes of 1772 in the following words:
“ Agreed for
“ 8s. 6d. an a-
“ cre for every
“ year hereaf-
“ ter;”

that he continu-
ed to receive the
said composition
of 8s. 6d. an a-
cre to *Michael-*
mas 1777.

The defendant *S. Hutchins*, *B. Williamson*, and *H. Hewitt*, said, that for about fifty years before a composition of six shillings an acre had been paid for the nursery grounds in the parish to the vicar; that *Waller*, about 1771, being desirous of raising the composition to ten shillings an acre, divers meetings were had between him and the occupiers; that on the second day of *October* 1771, at that meeting, the defendant *H. Hewitt* paid *Waller* one year's tithe, at the old rate of six shillings an acre, to *Michaelmas* 1777, and took a receipt for the same; that after some discourse between them, the defendant *Waller* insisted on ten shillings an acre, which they refused; that he proposed to accept nine shillings, and the defendants offered eight shillings and sixpence; that thereupon they tossed up whether it should be eight shillings and sixpence or nine shillings; which being consented to, *Waller* tossed up half-a-guinea, and the defendant *S. Hutchins* called HEAD; that the said half-guinea having settled with the head upwards, the defendant *Williamson* said, “ *Doctor, We have won;*” that it was thereupon agreed, as they understood, between him and them on behalf of the said nurserymen, that the composition for the tithes of all the nursery grounds within the said parish should for the future, during the incumbency of him, be at the rate of eight shillings and sixpence an acre; that the said defendant *Hewitt* informed *Waller*, that some memorandum should be made of the agreement that had been made; that thereupon he assented thereto, and wrote under the said receipt so given by him as follows: “ Agreed
“ from eight shillings and sixpence an acre for every year here-
“ after;” that they then, and still considered the said agreement as a permanent agreement between him and the said defendants on behalf of themselves and all other nurserymen within the parish; and that it was to continue during the incumbency of *Waller*; that the said defendant *Hewitt* was the more confirmed in such opinion, because he having paid his composition for tithes at the rate aforesaid up to *Michaelmas* 1772, the said defendant *Waller* gave him a bill and receipt as follows, viz.
“ *Messrs. Hewitt and Smith*, debtors to the Reverend Mr. Walker
“ on account of tithes due at *Michaelmas* 1772, to twenty-one
“ acres of nursery-ground, at eight shillings and sixpence an
“ acre, as by agreement. Eight pounds, eighteen shillings, and
“ sixpence. Received this nineteenth day of *December* 1772,
“ the above contents in full, by me, JAMES WALLER, vicar;”
and because *Waller* had continued to receive the said composition up to *Michaelmas* 1777; that for many years before 1772, they had been accustomed to pay a composition for their tithes after the following rates, viz. “ six shillings an acre per annum
“ for

“for garden ground, and three shillings for arable land;” that upon *Waller* becoming vicar, they waited upon him to know if he would take the aforesaid compositions of them, which he would not consent to, but demanded six shillings an acre both for the garden ground and arable land, which the defendants thought very unreasonable, and resolved not to agree to it, as he was entitled to no more than a moiety of the great tithes, and they having only paid, up to that time, three shillings an acre to his predecessors, and three shillings an acre to *R. Greening*, the owner of the other moiety; that *Waller* being determined not to abate, and the said farmer gardeners not to accede to his proposal, they parted dissatisfied, when *Waller* said, he would take his tithes in kind, and which he attempted to do; that finding it would not answer, he soon afterwards agreed with the defendants and the rest of the farmer gardeners, that upon their paying six shillings an acre, as well for garden ground as farming produce crop or not crop (excepting seven shillings an acre for ten acres in the possession of the defendant *Combes*, which *Waller* insisted was a fruit garden), he would give them all leases during his incumbency; that the defendants, for avoiding all disputes with him, acquiesced therein; that they had ever since paid their tithes according to such agreement: and they submitted, that they were entitled to have such agreement carried into execution; and to have a lease granted to each of them of their said tithes, agreeable thereto.

ADAMS
against
WALLER;
et c. Contra.

and that they were entitled to have a lease of the said tithes pursuant to such agreement, decreed.

The defendant *J. Rouse* said, that having paid the composition for his tithes on the tenth of *January* 1772, in consequence of such agreement, a receipt was given to him by *Ed. Cooper*, on behalf of *Waller*, at the foot of which receipt, in confirmation of the said agreement, *Waller* wrote as follows; “Agreed in future to pay for thirty-one acres, two roods, at six shillings an acre, which will amount to nine pounds, nine shillings;” that he, the defendant, had accordingly paid him the said nine pounds, nine shillings, for his annual composition every year since up to *Michaelmas* 1777, for the said thirty-one acres two roods, and also after the same rate *per acre* for all the lands he had since occupied in the parish.

The defendant *J. Rouse* states a receipt by *Waller's* agent to pay 6s. an acre for the future.

The defendant *J. Rubergall* said, that on the tenth of *January* 1772 he paid *Waller* the composition for his tithes up to *Michaelmas* 1771, at which time he gave him a receipt for the same, and wrote underneath it as follows: “Agreed in future for thirty-five acres, at six shillings an acre, which will amount to ten pounds, ten shillings.”

The defendant *Rubergall* states a receipt to pay 6s. an acre for the future.

ADAMS
against
WALLER;
et Contra.

The defendant
S. Hutchins
states a receipt
to pay 6s. an a-
cre.

The defendant S. Hutchins said, that on the sixteenth of December 1772 he paid Waller the composition for his tithes up to Michaelmas 1772, at which time he gave him a bill and receipt, wrote and signed by him, viz. "Mr. Samuel Hutchins, debtor to the Reverend Mr. Waller on account of tithes due at Michaelmas 1772, to sixteen acres, one rood, nursery ground, at eight shillings and sixpence an acre, as by agreement, six pounds, eighteen shillings, and three half-pence; to ten acres corn land, &c. on the south side of Kensington parish, at six shillings an acre, as by agreement, three pounds: nine pounds, eighteen shillings, and three halfpence. Received this sixteenth day of December 1772, the above contents, JAMES WALLER;" that pursuant to the said agreement, he had ever since, up to Michaelmas 1777, paid eight shillings and sixpence an acre for the nursery grounds, and six shillings an acre for the corn land.

The defendant
H. Hutchins
states a written
agreement with
Waller to pay a
certain sum for
his lands, "so
long as Wal-
ler should
continue vi-
car."

The defendant H. Hutchins insisted, that Waller, on the seventeenth of January 1772, entered into, and with his own hand wrote and signed an agreement with him, whereby he agreed to let him so long as he should continue vicar of the said parish, all the tithes (whether rectorial with which he was endowed or vicarial) of one hundred and sixteen acres, which he then occupied in the parish, at the yearly rent of thirty-four pounds, nineteen shillings, with A PROviso, that if the then mode of cultivation should be altered, the said agreement should be void; but that so long as the said lands should continue in their then state, and so long as he should continue vicar of the said parish and him the occupier of said land, the said agreement was to be binding on each party, and preparatory to a lease between them. He said, he had ever since paid Waller, pursuant thereto, the yearly sum of thirty-four pounds, nineteen shillings; and insisted on the benefit thereof.

And all the
defendants in-
sist, that the said
agreements are
binding on the
plaintiff.

All the said defendants insisted, that the plaintiff, before the agreement for and execution of the lease to him from B. Bryan, had full notice of the said agreements having been entered into between James Waller and the defendants; and that he, by having entered into them, and having ratified the same, and received the said several compositions from them up to Michaelmas 1777, without objecting thereto, had manifested his sense and understanding thereof, and could not now vary or rescind the same.

The defendant
Hewitt and o-
thers insist, that
the vicar is not
entitled to the
tithes of hot-
house plants and
grafted trees.

The defendant H. Hewitt and others insisted, that the vicar was not entitled to the tithes of pines, melons, hot-house plants, green-house plants, or of any plants or roots growing or planted in hot-houses, or of any exotics, or of any plants or trees inoculated or grafted, or of any plants, trees, shrubs, or roots,

pur-

purchased or planted in their nurseries or garden-grounds, and from thence sold out again without having made any increase in number.

ADAMS
against
WALLER;
et c. *Contra.*

All the defendants insisted, in case *Waller* had any right to determine the composition in the manner he had attempted, which they denied, that the several notices given to determine such compositions and take the tithes in kind, were short and insufficient, considering the nature of the crops to be tithed.

All the defendants insist, that if the agreements are only temporary, the notices to determine them are too short.

The defendants *J. Rouse* and others, by their further answer, also submitted to the judgment of the Court, that the vicar was not entitled to the tithes of pines, melons, hot-house plants, green-house plants, or of any plants or roots growing or planted in hot-houses, or of any exotics within the said parish, or of any plants or trees inoculated or grafted, or of any plants, shrubs, trees, or roots, purchased and planted in their nurseries or garden-grounds, and sold out again without having made any increase in number.

The defendant *J. Rouse* and others insist, that the vicar is not entitled to the tithes of hot-house plants and grafted trees.

The defendant *H. Hutchins* admitted, that he had never signed the agreement dated the seventeenth day of *January* 1772, but left the plaintiff to the proof thereof: and he recited the several conversations touching assessing *Waller* to the poor rates for his tithes; and said, that he came to some agreement touching the same, as stated in the answer; and insisted on the impossibility of setting out the tithes, for the reason aforesaid.

The defendant *H. Hutchins* admits, that he did not sign the agreement of the 17th of *January* 1772.

H. Hewitt and others filed their *cross bill* against *Waller*, *Bryan*, and *A. Adams*, and thereby particularly insisted on the agreement entered into between the said *J. Waller*, as vicar of the parish, and the plaintiffs and others occupiers of nursery grounds therein, for an annual composition for the tithes of such nursery grounds, at the rate of eight shillings and sixpence an acre; and also on the agreement entered into between him and them, &c. occupiers of garden grounds not used for nurseries, and lands used in common tillage within the parish, for an annual composition for the tithes of such garden ground and land, at and after the rate of six shillings an acre during the said *Waller's* incumbency; and that he was in equity and conscience bound to perform the said agreements. They insisted, that he having entered into and ratified the said agreements could not afterwards make any valid conveyance, lease, or demise of such tithes to the said *B. Bryan*, or any other person; and that such lease to the said *Bryan*, and the assignment thereof to *A. Adams*, were void and of no effect against the plaintiffs, having been made by persons who had no right to make the same. They therefore prayed, that *Waller* might be decreed to accept the annual sums of eight shillings and sixpence, and six shillings, as compositions for the said tithes, and perform the several and respective agreements so made and entered into by

The defendant *Hewitt* and others file a cross bill to establish the composition at 8s. 6d. an acre for nursery grounds, and 6s. an acre for arable land during *Waller's* incumbency.

ADAMS
against
WALLER;
et c. Contra.

him with them, and might indemnify them respectively from the several claims of the other defendants on account of their said tithes, the plaintiffs being willing to pay the said defendant *Waller* what was due on account of the said compositions for the said tithes, at the rate of eight shillings and sixpence, and six shillings an acre respectively; and also to pay the same annually, during the incumbency of *Waller*, as a composition for the tithes of the said grounds in their respective occupations; and that the said *B. Bryan* and *A. Adams* might be restrained by the decree of this court from taking their tithes in kind of the said grounds, and from any ways molesting the said plaintiffs on account thereof.

The vicar admits the interview between him and the occupiers, on the 2d of October 1771; that he there agreed to accept of a composition of 8s. 6d. an acre, in lieu of the tithes of their nursery grounds; that he underwrote the receipts in the manner before stated; but that he only intended that such composition should be for the year ensuing, and not for so long as he should continue vicar of the parish.

The defendant *Waller* said, that after his induction into the vicarage, he found that the several annual compositions paid by the occupiers of lands and grounds in the parish for the tithes of such lands and grounds were considerably under the real values thereof; that he thereupon signified his intention to raise the same; and he stated the meeting of the second of October 1771, and the proposals that were then made; but insisted, that he did not mean to agree, nor had he then agreed to toss up, whether nine shillings or eight shillings and sixpence should be paid for the said composition; but he admitted, that he at length consented to receive from the said occupiers after the rate of eight shillings and sixpence an acre as a composition for the tithe of their said lands; but that he meant only to accept such composition for a year certain, or such longer time as he should think proper. He insisted, that no agreement in writing was then, or at any other time, entered into between him and the plaintiffs, or any other occupiers of the said nursery grounds, for a composition for their said tithes. He said, that about the twenty-third of January 1772 he entered into an agreement in writing with *H. Hutchins* as before mentioned. He also said, that when the plaintiff *J. Rouse*, in 1772, paid him a sum of money as a composition for his tithes, and took a receipt for the same, he did write down upon the same what sum he was to pay as a composition for his tithes for the then next year; but he denied that it was at either of the said times, or at any other time or place, consented to or agreed between him and the other defendants, or any of them, on behalf of themselves and the other occupiers, that the aforesaid, or any other annual composition for tithes of all or any such nursery grounds, should continue as long as he should continue vicar, or that any other agreement than such as before mentioned was then, or at any other time entered into between him and the plaintiffs, or any other of the said occupiers, or that he had ever offered them a lease of their respective tithes. He denied, that he had entered into

any
any

any agreement with such of the plaintiffs or other persons as occupied garden grounds or other grounds not used for nurseries, or for lands used for common tillage, to accept in future a composition of six shillings an acre, or any other composition for the tithes of such grounds and lands for every year thereafter during his incumbency, or for any other term save as aforesaid, or that he had at any other time, entered into any agreement with them. He insisted, that it was not understood or considered by the plaintiffs and all persons that the agreements respectively made as aforesaid were to continue in force or be binding on them and the defendant during all the time he should so continue vicar of the parish, or for any longer time than one year from the time of making thereof respectively. He admitted, he had yearly, from *Michaelmas* 1771 to *Michaelmas* 1777 inclusive, received the said annual compositions of eight shillings and sixpence and six shillings an acre from the plaintiffs, except *A. Shailer*, and from the several owners and occupiers of such nursery grounds and garden grounds and lands used in common tillage in the said parish. He said, that in *August* 1777 a demand was made upon him for the poor's rate in respect of the said tithes, contrary to the former practice of the parish; that therefore a meeting was held at his house of the parishioners and other occupiers within the parish, when they came to terms, as in his answer was mentioned. He also said, that he entered about this time into an agreement with the defendant *B. Bryan* to grant him a lease of the tithes of the lands on the south side of the king's highway as aforesaid for six years, if he should so long continue vicar of the parish; at two hundred and eighty pounds *per annum*; that in pursuance thereof, about the ninth of *September* 1777, he caused the said plaintiffs and other occupiers of nursery grounds, garden grounds, and other lands within the said parish to be severally served with notices to the purport or effect as in the bill mentioned: and that on the twenty-seventh day of *September* 1777, he executed a lease to the said *B. Bryan*.

ADAMS
against
WALLER;
s. s. Contra.

The defendants *B. Bryan* and *A. Adams* spoke to the same effect.

The defendant *B. Bryan* insisted on the agreement entered into before the eighth day of *September* 1777, between *Waller* and him, for a lease of the tithes arising in that part of the parish as before-mentioned, and of the lease executed to him by *Waller* of such tithes on the twenty-seventh day of the said *September*: and said, that in pursuance of the said agreement, he had, some time between the twentieth and twenty-seventh days of *September*, caused to be delivered notices to the plaintiffs and other occupiers of land in the parish, dated the tenth of

B. Bryan insists on the validity of the lease made to him by *Waller*; and that the notices were sufficient to determine the composition with the occupiers.

ADAMS
against
WALLER;
et c. *Contra.*

the said month, that he should take the tithes in kind of the lands they held in the said parish from *Michaelmas* then next. He insisted, that the other defendant *Adams*, soon after the execution of the said lease, having agreed with him for an assignment thereof, and to pay him the yearly sum of sixty-three pounds, he, by indenture dated the twenty-fourth of *March* 1778, assigned to him all those the tithes and premises demised to him by the said lease from the defendant *Waller*, and all his estate and interest therein for the remainder of the said term.

A. Adams insists on the validity of the assignment of the said lease from *Bryan* to him, and the notice given to the occupiers.

The defendant *A. Adams* insisted on the said agreement entered into between him and the defendant *Bryan* for an assignment of the lease executed by *Waller*, and of the indenture of assignment thereof executed to him by *B. Bryan*; that in pursuance of the said agreement, he caused to be delivered, on the twenty-seventh of *September* 1777, to each of the plaintiffs and others parishioners of the parish, a notice dated on the twenty-seventh day of *September*, purporting that he had taken their tithes, and that they were not now to move any of their crops after *Michaelmas Day* then next, without giving notice to him, that the same might be properly tithed: and he insisted on his right to tithes in kind of the several titheable matters arising on the lands occupied by the said plaintiffs as aforesaid: and hoped that he should not be restrained from taking proper measures for the recovery thereof.

The causes
heard.

The plaintiff in the original cause replied, and the defendants rejoined; the plaintiffs in the cross cause also replied, and the defendants rejoined, and witnesses were examined on the part and behalf of all parties in both causes; and upon hearing counsel for all parties several days; and the defendant's counsel in the original cause objecting to the notice delivered to the defendants for taking their respective tithes in kind, and also to the plaintiff's title; and on hearing the plaintiff's counsel; and on reading, on behalf of the plaintiff in the original cause, the several answers of the defendants; the depositions; an indenture of lease from the said *James Waller* to the said *B. Bryan*, dated the twenty-seventh of *September* 1777; an assignment thereof, executed by the said *B. Bryan* to the said *A. Adams*, dated the twenty-fourth of *March* 1778; and reading, for the defendants in the original cause, several depositions; as also receipts, signed by the said *James Waller* and *Edward Cooper*, dated respectively the second of *October* 1771, and the sixteenth and nineteenth of *December* 1772, and the nineteenth of *February* 1773, and the tenth of *January* 1772; an agreement, signed by the said *James Waller* and *H. Hutchins*, dated the seventeenth of *January* 1772; an indenture of release, dated the tenth of *May* 1780, from the plaintiff to the said *B. Bryan*; and on full debate of the matter;

THE

THE COURT ordered the deputy remembrancer to take an account of what was due to the plaintiff in the original cause from the defendants *G. Rouse, &c.* for all the tithes in kind demanded by the plaintiff in his bill; that the said defendants in the original cause do pay to the plaintiff his costs to this time; that the original cause be continued in the paper to be further heard upon the coming in of the report; and that *the cross bill* be dismissed with costs.

ADAMS
against
WALLER;
et d. Contra.
The tithes de-
creed.

H. Hewitt and six other of the defendants in the original bill appealed to the house of lords against the said decree of the twenty-ninth day of *January* 1781; and on the nineteenth of *April* 1782, the question whether the notice to determine the composition was sufficient, came before the house; and the Judges, having been summoned, were directed to deliver their opinion to the house upon the following question, TO WIT, "Whether
" the notice given on the eighth day of *September* was a suffi-
" cient notice to determine a composition for tithes from year
" to year, such year commencing on the twenty-ninth day of
" *September*."

The defendants
appeal to the
house of lords.

MR. JUSTICE GOULD delivered the unanimous opinion of the Judges present, that such notice was by no means a sufficient notice to determine a composition for tithes from year to year.

The Judges of
opinion, that *the*
notice did not
determine *the*
composition.

The house of lords therefore, on the sixteenth of *May* 1782, ordered the decree, so far as it related to the first cause, to be reversed, and the bill to be dismissed; and so far as the said decree related to the second mentioned cause, that the said decree be affirmed.

The decree of
the court of ex-
chequer so far
reversed.

The said order of the house of lords was accordingly made an order of the court of exchequer; and on the third of *June* 1782, the cause came on to be reheard; and upon hearing counsel for both parties; and reading the order of the house for the rehearing;

The cause re-
heard.

THE COURT ordered the bill, so far as it related to *the gardeners*, to be dismissed without costs; and that the sum of ten pounds, the deposit money for the rehearing, be restored by the deputy remembrancer to the defendants or their solicitor.

The bill as to
the gardeners
dismissed.

SKINNER, Chief Baron.
EYRE, Baron.
HOTHAM, Baron.
PERRYN, Baron.

TOLL

HILARY TERM
21. GEO. 3.

TOLL *against* PIERCE.

Hampshire, 22d February 1781.

The vicar of *Kingsclere*, in *Hampshire*, says, he is entitled to the small tithes of the parish, and the great tithes of the villages of *La Putte* and *Baltesbam*, and of the lands called *De La Hethe*; and claims the tithe of turnips, milk, and barren cattle which had arisen since 1773 on *Cannon Court Farm*, *Wait's Farm*, *Frude's Farm*, and *Catt's Farm*. See other causes, Easter Term,

39. Car. 2.; Trinity Term, 28. Car. 2.; and Trinity Term, 14. Geo. 3.

The occupiers set up a *modus* of 10d. a milch cow, in lieu of her milk and calf, and 2d. for every cow without a calf;

deny that he is entitled to the tithe of meadow hay or turnips; and say, that the impropriator is entitled to the tithe hay of those places of which the vicar takes the great tithes.

The owner of *Cannon Court Farm* insists, that he had paid the tithes of the wool of those sheep which were depastured on his turnips, and that therefore no tithes are payable for the turnips.

THE bill stated, that the parish of *Kingsclere*, in the county of *Hants*, was a vicarage; that the vicar thereof was entitled to all small tithes arising therein, particularly to the tithes of turnip seed and turnips, whether gathered and carried away, or fed on the land without drawing by sheep or any other cattle; to the tithe of milk; of the agistment of barren and unprofitable cattle; of colts foaled therein; and to the tithes of corn, grain, and other great tithes, in the villis of *La Putte* and *Baltesbam*, and in the lands called *De La Hethe*, in the said parish; that the plaintiff was, about the fifteenth day of *February 1773*, instituted and inducted into the said vicarage, and entitled to the said tithes; that from the said time, the defendants had occupied *Cannon Court Farm*, *Wait's Farm*, *Frude's Farm*, and *Catt's Farm*; that they had respectively growing yearly turnips, some of which they gathered, and had fed others by sheep and other cattle; that they had also milch cows; that they had depastured divers barren and unprofitable cattle, and had many colts foaled on the said farms, the tithes of which they had refused to pay.

The defendant *Pierce* and others the occupiers said, that the vicar never had, till the year 1774, received the tithes, except of gardens, demanded by the bill; and denied that he was entitled to the tithe of milk in kind; but insisted, that tenpence was payable to him for every cow yielding a calf in the said parish, upon the fall of such calf, in lieu of the tithe of milk and calf, viz. eightpence in lieu of tithe of calf, and twopence in lieu of milk; another *modus* of twopence for every cow not yielding a calf; that he was entitled to the great tithes, except the tithes of meadow hay, arising in certain districts; but whether in the villis of *La Putte* and *Baltesbam*, and the lands called *De La Hethe*, they knew not; nor whether he had a right to the tithe of turnips or turnip seed. They further said, that the impropriator was entitled to the tithes of hay arising from the meadow land which the said vicar was endowed with, and received the great tithes.

The defendant *Pierce* said, that during the plaintiff's induction he had occupied *Cannon Court Farm*; but that part thereof lay in that part of the parish where the great tithes were received by

by the vicar ; that he had sown thereon turnips, and ate them off by sheep, and no other cattle, without setting out the tithe, thereof ; that the value of the said tithe was each year one shilling and sixpence an acre, and no more ; that he had paid the impropriator the tithe of wool of all sheep by which the said turnips had, in the years 1772 and 1773, been ate off, and was liable to pay the said impropriator the tithe of wool of all the sheep with which the said turnips sown by him in 1774, and then feeding off, when and so soon as such sheep should be shorn ; and therefore he contended, that the plaintiff was not entitled to any tithe of the said turnips.

TOLL
against
PIERCE.

The defendant *E. Smith* said, that he occupied *Wait's Farm*, but that no part thereof laid within the part of the parish where the great tithes were received by the vicar : and he denied, that he had had any turnips whatsoever.

The owner of
Wait's Farm
answers to the
like effect.

The defendant *J. Smith* said to the like purport for *Frude's Farm*.

So the owner of
Frude's Farm.

The defendant *Rogers* said, that he occupied *Catt's Farm* ; and said to the like purport as the defendant *Pierce* had done, except that he allowed that the tithe of his turnips was worth two shilling an acre.

So the owner of
Catt's Farm.

They all admitted, that they had kept on their lands and grounds milch cows, which had yielded milk ; and insisted on the said two *modus*es of tenpence and twopence in lieu thereof.

And insist on
the *modus*es be-
fore stated.

The defendant *Lord Porchester*, the lessee of the tithes, said, that the parish of *King'sclere* was a rectory and a vicarage ; that the vicar was entitled to the tithes of wood, and to the tithe of corn, grain, and other great tithes, in certain districts ; that the plaintiff had been presented to the vicarage under an illegal title ; that the defendant *the Duke of Bolton* was seised of the rectory, with the tithes, appurtenances, and lands thereto belonging ; that he, by indenture of lease dated the fourth of *April* 1754, had demised to *Robert Herbert* all that the rectory and parsonage, &c. in the parish of *King'sclere*, and also *Oakley Chapel*, &c. &c. as in the said answer mentioned, to hold to him, his heirs, &c. for ninety-nine years, &c. as in the said indenture is contained ; that by the said lease, he, by himself or tenants, enjoyed the said rectory, parsonage, and premises, and received the profits thereof to his death, which happened in *April* 1769 ; that the said *Robert Herbert* made his will, and therein appointed trustees for this defendant, as therein named ; that the said defendant had, by virtue of the said will, become entitled to the beneficial interest in the rectory, tithes, and premises demised by the said lease ; that by virtue of the said lease and will, he then was the owner and impropriator of the said rectory, and had immemorially been entitled to all the great and small tithes arising

The lessee of the
impropriator ad-
mits, that the
vicar is entitled
to the great
tithes in certain
districts ; and
insists, that he,
as lessee, is enti-
tled to the tithes
of the rectory
and of *Oakley
Chapel* ;

that he is enti-
tled to all the
tithes of which
the vicar is not
endowed ;

TOLL
against
PIERCE.

that he is entitled to the tithe hay of certain meadows, and to the tithe of wool and lambs;

that he is entitled to the small tithes of those places in which the vicar is entitled to the great tithes.

The impropriator says, that the vicar is only entitled to such tithes as the vicarage was endowed with.

arising in the said parish, &c. except only such tithes whereof the vicar had been endowed; but that he could not set forth all the particular tithes to which he was so entitled; that the vicar was so far from being entitled to all the small tithes in the parish, that the lessees of the rectory had always received the tithes arising from all or the greater part of the meadow land, and also all the tithe of wool, and a great part of the tithe of lambs within the parish; that the said vicarage had been formerly endowed or augmented with a large portion of tithes of corn and grain arising from several lands therein; that the vicar was only entitled to such tithes, and to such small tithes as he and his predecessors had been endowed with; that the impropriator was entitled to the small tithes arising from the meadow land of which the vicar was endowed, and with the great tithes; and he claimed title to all such tithes as were demised by the said lease, and had been usually enjoyed by the impropriators of the rectory or their lessees.

The defendant *the Duke of Bolton*, the patron and impropriator of the parish, said, that it was a rectory and a vicarage; that he could not tell whether the vicar was, either by ancient endowment or by prescription, entitled to all tithes yearly arising therein, or to the tithes of turnips, turnip seed, milk, or agistment of oxen and other cattle, or whether he had constantly received the same; but believed, that he was entitled to the tithes of wood in the parish, and also the tithes of corn and grain and all other great tithes yearly arising in certain districts of the said parish; but in what particular district or lands, or whether in the said districts or vills of *La Puute, &c.* as aforesaid, he knew not; that he, as vicar, was entitled to such great and small tithes as had been usually taken and received by the vicar thereof, but to no other tithes whatsoever; that his, the defendant's, uncle being seised of the rectory, by indenture, dated the fourth of April 1754, demised the same to *Robert Herbert*, as in the lessee's answer is set forth; but that the rectory having been usually let by his ancestors, he knew not what right or interest he or his lessee had to the agistment tithe of oxen, sheep, and other cattle, fed or depastured within the said parish, or any part thereof, or to the tithe of turnips, turnip seed, and milk, or to the tithes of corn or grain yearly arising, &c. within the districts or vills aforesaid, or any other district or vill within the said parish; but submitted to the court what right and title he had thereto.

The cause heard.

The plaintiff replied; the defendants rejoined; and witnesses were examined on the behalf of the plaintiff and the defendants the occupiers; and upon hearing counsel for all parties; and reading, on the behalf of the plaintiff, an entry of an endowment out of a book from the registry of *the Bishop of Winchester*, dated 1305; two other entries relating to the parish of *Kingsclere*,

clere, in the county of *Hants*; the presentation of the plaintiff, dated the fifteenth day of *February* 1773; and reading, on behalf of the occupiers, the defendants joint answer to the amended bill; and on full deliberation had thereon;

TOLL
against
PISAGE.

THE COURT ordered the bill to be dismissed as against the *Duke of Bolton* with costs; and also so far as relates to the tithe of colts, turnips, and turnip seed, to be dismissed with costs to the occupiers; and that the deputy remembrancer take an account of the tithe of agistment of dry, barren, and unprofitable cattle fed and depastured on the respective lands aforesaid of the said defendants the occupiers.

The bill as to
tithes of colts,
turnips, and
turnip seed dis-
missed; and the
agistment of
barren cattle de-
creed.

THE COURT further ordered issues to try,

Issues directed
to try
the *modus* as to
milch cows
with calves;

FIRST, "Whether, that from the time whereof the memory
" of man is not to the contrary, there hath been a certain *modus*
" or constant invariable customary payment of tenpence paid
" and payable to the vicar of the said parish for the time being,
" by each occupier of lands within the said parish having or
" keeping one or more cow or cows yielding a calf or calves
" within the said parish or the titheable places thereof, upon
" the fall of every calf dropped within the said parish, viz.
" eightpence, part thereof, in lieu and satisfaction for the tithe
" of calf, and twopence, residue thereof, in lieu and compensa-
" tion and satisfaction for the milk or white of every cow
" yielding such calf."

SECONDLY, "Whether, that from time whereof the memory
" of man is not to the contrary, there hath been a certain other
" *modus* or constant invariable customary payment of twopence
" paid and payable yearly to the vicar of the said parish for the
" time being, by every occupier of lands within the said parish
" having one or more cow or cows brought into and kept in
" the said parish, or the titheable places thereof, not yielding a
" calf or calves, in full satisfaction for the tithe of the milk
" or white of every such cow not yielding a calf within the said
" parish."

the *modus* as to
milch cows
without calves.

The defendants the occupiers to be the plaintiffs at law, and the Judge to be at liberty to indorse, &c. with the usual directions: the consideration of costs, and all further directions respecting the account of the agistment tithe, and of the trial of the said issues, to be reserved, &c.

The occupiers
to be plaintiffs
at law.

On the twenty-second of *February* 1782, the defendants the occupiers moved to make an agreement made between the plaintiff and them a rule of court; but the Court refused the motion.

The parties
come to an a-
greement.

EYRE, *Baron*.

HOTHAM, *Baron*.

PERRY, *Baron*.

HOOVER

HILARY TERM
21. GEO. 3.

HOOPER *against* WILSON.

Somersetshire, 23d February 1781.

The landholders of the parish of *North Curry*, and the chapelries of *West Hatch* and *Stoke Gregory*, in *Somersetshire*, state, that the said places are distinct parishes, forming one vicarage ;

that heifers are not called cows until they have had a second calf ;

that cows which are with calf in the spring, and not milked during part of the winter, are called *summer cows* ;

those which are milked throughout the winter are called *winter cows* ;

that the following *modus*es are payable at *Easter* ;

1st, 2d. a summer milch cow ; and

2dly, 1½d. a winter milch cow, in lieu of tithe milk ;

3dly, 2s. a score of sheep shorn, in lieu of tithe wool ;

4thly, 1d. a score per week for sheep depastured ;

5thly, 1d. for garden stuff ;

6thly, 1s. a hoghead for cyder ;

THE plaintiffs, as well on behalf of themselves as of all others the owners and occupiers of lands in the parish of *North Curry*, with the chapelries of *West Hatch* and *Stoke Gregory*, in the county of *Somerset*, annexed, stated, that the parish of *North Curry* had been immemorially, and then was, a distinct parish, with one parish-church and church-yard or burial ground thereto adjoining ; that the parishes of *Stoke Gregory* and *West Hatch*, although called chapelries annexed to *North Curry*, had been immemorially, and then were, distinct parishes, with a church-yard and burial-ground thereto belonging ; that the said three parishes were then called by the name of the parish of *North Curry*, with the chapelries aforesaid annexed ; that they then, and, for many years past, had been deemed one vicarage, and had had one and the same patron and vicar ; that within each and every of the same parishes respectively, and the neighbourhood thereof, heifers had immemorially continued to be called heifers until their second calving ; that from that time, and not before, they were called cows ; that within the said several parishes and neighbourhood thereof, a cow which proved with calf in the spring of the year, and became dry, and was let up and not milked during part of the succeeding winter, had been immemorially called a summer milch cow ; that a milch cow which missed the bull, and did not prove with calf at the due season, but continued to be milked the whole winter, had been immemorially called a winter milch cow ; that such heifers and winter milch cows do not produce or yield so much milk as summer milch cows ; that within each of the said parishes, there had been immemorially paid by the occupiers of lands therein to the vicar the following *modus*es : FIRST, Twopence for every summer milch cow depastured in the said parishes, in lieu of tithe milk. SECONDLY, Three halfpence for every winter milch cow, in lieu of tithe milk. THIRDLY, Two shillings for every score of sheep shorn in the said parishes, in lieu of tithe wool. FOURTHLY, One penny a score, by the week, for the agistment of sheep in the said parishes. FIFTHLY, One penny for every garden, in lieu of tithe fruit, herbs, roots, and garden stuff therein. And SIXTHLY, One shilling for every hoghead of cyder made from apples grown in the said parishes, and not in gardens, in full satisfaction of all tithes of such apples from which such cyder was made ; that the said *modus*es were due at *Easter* ; that the same had been immemorially accepted in lieu of such tithes ; that the occupiers of dwelling-houses in the said parishes had been immemorially used to pay to the vicar the following sums of money, in lieu of *Easter*

Easter offerings, to wit, twopence if the occupier was a single man or single woman, for himself and herself and family; and fourpence if married; that the vicar of *North Curry* had been immemorially seised in fee of a certain piece of coppice ground, containing one acre, lying in *Lyne Wood*, in the said parish, and entitled to the rents, issues, and profits thereof, in lieu of all tithes of underwood growing on all other wood land in the said parishes; that no tithes in kind for milk, butter, cheese, wool, agistment of sheep not shorn in the parish, apples not grown in a garden from which cyder is made, fruit, herbs, roots, garden stuff, coppice or underwood, arising in the parish, had ever been set out or paid in kind; that they, the plaintiffs *Hooper, Collins, Vaining, Barrington, and Bullen*, as occupiers of farms, gardens, and lands, had, from time to time, yearly paid or tendered to the defendant *Wilson*, the vicar of the parish, the several *modus*es afore said; that he had received and given receipts for the same to the plaintiffs up to the end of the year 1768; but that he had since refused to receive the same. The bill therefore prayed, that the said *modus*es might be established, and the defendant *Robert Wilson* and his successors be decreed to accept such *modus*es in future.

The defendant *Wilson*, the vicar, insisted, that he was entitled to tithe in kind of milch cows and heifers, gardens, wood not being timber, agistment of dry, barren, and unprofitable cattle, wool, pigs, calves, lambs, colts, geese, goose feathers, eggs, ducks, turkies, chickens, pigeons, and other poultry, and all other tithes whatsoever, arising in the said parish and chapelries, except as in the answer was excepted; that he was also entitled to twopence for every person above the age of sixteen years, as an *Easter* offering; that *North Curry, Stoke Gregory, and West Hatch*, were distinct parishes, each of them having a church, churchyard, or burial ground; but that they were usually described by the name of the parish of *North Curry*, with the chapelries afore said annexed; that they were then, and for many years past had been, deemed one vicarage, and had one and the same patron and vicar; that heifers and cows had been therein described as stated in the bill; that in a former suit (a), an issue had been directed to try his right to tithe milk in kind; but that he had been since advised to waive his demand thereof; and therefore he admitted, there were such *modus*es as stated in the bill in lieu of tithes of milk; but he denied, that there were such *modus*es, in lieu of tithes of wool and cyder made from apples growing within the said parishes not in gardens. He admitted, that he and his predecessors vicars of the said vicarage was and had been, as he believed, entitled in right of such, from time immemorial, to a piece of coppice wood land called *Lyne*

HOOPER
against
WILSON.

7thly, 2d. a single person, and 4d. a married person, for *Easter* offerings;

8thly, that the vicar enjoys an acre of coppice wood in *Lyne Wood*, in lieu of the tithes of wood;

that the said *modus*es had been accepted by the vicars to the year 1768; and pray that they may be established.

The vicar says, he is entitled to

2d. for every person above the age of sixteen as an *Easter* offering;

admits the *modus*es as to the tithe of milk; denies the *modus*es as to wool and cyder; admits he enjoys the acre in *Lyne Wood*; but denies it to be in lieu of tithe wood;

Wood;

(a) See *Wilson v. Hooper*, vol. 3. page 490.

HOOPER
against
WILSON.

admits the *modus*
in lieu of gar-
den stuff ;

sets forth the
deed under
which the vicars
had enjoyed the
said acre of
woodland.

The dean and
chapter of *Wells*
answer as improp-
riators of the
parish.

The cause
heard.

Issues directed
to try,
1st, the *modus*
of 2s. a score of
sheep shorn, in
lieu of tithe
wool.

adly, the *modus*
of 1d. a score a-
week, in lieu of
the agistment
tithe of sheep
depastured.

Wood ; but denied that such piece of land was, to his knowledge, held in lieu and full satisfaction of such tithes, as stated in the bill. He admitted, there were such *moduses* within the said parishes in the respect of gardens ; and that no tithes in kind of gardens, milk, butter, or cheese, had been ever paid within the said parish ; nor did he recollect that he had ever received, or heard of any other person having received tithe in kind of wool, or any payments on account of agistment of sheep not shorn within the said parish, or for apples otherwise than before mentioned. He said, he had set forth a copy of the deed under which the vicars were entitled to the said piece of coppice land ; and that it contained about three quarters of an acre, but knew not the motive upon which the same was made.

The defendants *the Dean and Chapter of Wells* admitted their being entitled to the advowson or right of presentation to the said vicarage, and also to the appropriate rectory ; and insisted, that they were entitled to every thing belonging to the said appropriate rectory, except as to the rights of the vicar ; but whether any and what *moduses* or prescriptive payments were due and payable for and in lieu of any species of tithes they could not set forth.

To which answer of the defendant *R. Wilson* only the plaintiffs replied ; and the defendant rejoined ; and witnesses were examined ; and upon hearing counsel for all parties ; and on full debate ;

THE COURT ordered the following issues to try,

FIRST, " Whether, from time whereof the memory of man is not to the contrary, there hath been, and now is, used and accustomed to be paid, by the occupiers and farmers of lands within the several parishes of *North Curry, West Hatch, and Stoke Gregory, otherwise Stoke Saint Gregory*, in the county of *Somerset*, to the vicar of the vicarage of the said parishes for the time being, or his farmer or tenant thereof, at *Easter* yearly and in every year, or so soon after as demanded, for every score of sheep shorn within the said respective parishes, the sum of two shillings, for and in lieu of and full satisfaction of all the tithes of wool arising from such sheep, and so in proportion for any greater or less number of sheep shorn within the said parishes."

SECONDLY, " Whether, from time whereof the memory of man is not to the contrary, &c. at *Easter* yearly, &c. for the agistment of sheep within the respective parishes which are not shorn therein, the sum of one penny a score by the week, and so in proportion for any greater or less number than a score kept for any greater or less time than a week."

THIRDLY,

THIRDLY, "Whether, from time whereof the memory of man is not to the contrary, there hath been, &c. at *Easter* yearly, &c. the sum of one shilling for every hoghead of cyder made from apples grown within the said parishes respectively, and not in gardens, in lieu and full satisfaction of all tithes of such apples from which such cyder is made; and so in proportion for any greater or less quantity than an hoghead."

HOOPER
against
WILSON.
3dly, The *modus*
of 1d. a hogf-
head of cyder.

FOURTHLY, "Whether, from time whereof the memory of man, &c. the vicar of the vicarage of the parish of *North Curry*, with the chapelries of *West Hatch* and *Stoke Gregory*, otherwise *Stoke Saint Gregory*, annexed, for the time being, hath been seised in fee or possessed of, or hath enjoyed in right of his said vicarage, a certain piece or parcel of coppice or wood land ground lying and being in a certain wood in the parish of *North Curry*, called *Lyne Wood*, and entitled to have and receive the rents, issues, and profits, in lieu and full satisfaction of all tithes of underwood growing and increasing in all other coppice or wood land ground lying within the said parishes, or either of them."

4thly, Whether
the vicar holds
the acre of wood
land in lieu of
tithe wood.

FIFTHLY, "Whether, from time whereof the memory of man, &c. the occupiers and farmers of messuages or dwelling houses within the respective parishes of *North Curry*, &c. have been and now are used and accustomed to pay to the vicar of the said parishes for the time being, or to his tenant or farmer, at *Easter* yearly, or so soon after as demanded, for and in lieu of *Easter* offerings, the following sums, to wit, in case such occupier or farmer be a single man or a single woman, then the sum of twopence only for such single man or single woman, and his or her family."

5thly, Whether
the *Easter* offer-
ings are 2d for
a single person.

SIXTHLY, "That in case such occupier or farmer be a married man, then the sum of fourpence, and no more, for such married man and his wife and their family."

6thly, And 4d
for a married
person.

The plaintiffs in equity to be plaintiffs at law; the issues to be tried by a special jury; and the judge at liberty to indorse, &c.; with the usual directions.

The vicar declined to try the issues; and on the twenty-third of *November* 1781, they were directed to be taken as confessed. The cause came on to be further heard on the third of *July* 1782, when the said *moduses* were ordered to be established, but without costs.

The issues taken
as confessed, and
the *moduses* esta-
blished.

HILARY TERM

21. C. 20. 3.

EDWARDS *against* THOMAS.*Glamorganshire, 23d February 1781.*

The rector of *Neath* and *Llantwichebach*, in *Glamorganshire*, is on'y entitled to a moiety of the small tithes arising in the hamlets of *Resolven* and *Clyne*; but the said small tithes, except of garden stuff, are payable in kind.

THE rector of *Neath* and *Llantwichebach* near *Neath*, in the county of *Glamorgan*, claimed all the great and small tithes which had arisen therein, and in the townships, hamlets, and vills thereto belonging, for six years last past. The bill charged, that neither the defendant *Vernon* nor his wife, nor any of her ancestors, had ever nominated any curate to officiate in the chapel within the hamlet of *Resolven*; that the same had been, for time immemorial, in a ruinous condition; that no divine service within the memory of man had been performed therein; that the several inhabitants of the hamlets of *Resolven* and *Clyne* constantly attended divine service, and buried and christened at the parish of *Llantwichebach* near *Neath*; and that the plaintiff was entitled to receive from such of the inhabitants the tithes arising in the said two hamlets. The bill further charged, that if *Vernon* or his wife or her ancestors had ever received any part of the great and small tithes in the hamlets of *Clyne* and *Resolven*, the same was received by or under some temporary agreement with the former rector, and which was not binding on him. The bill also charged, that the hamlet of *Clyne* was no part of the manor of *Resolven*, but part of the lordship marcher of *Avon Wallia*, in the said county, now belonging to *Sir Robert Mackworth*, lord of the said manor; that the advowson and rectory of *Neath* and *Llantwichebach* near *Neath* were never any part of the possessions of the *Abbey of Margam*, but had always belonged to the lords of the lordship marcher of *Neath*, heretofore the estate of *Thomas, Lord Windsor*; that if the manor of *Resolven* was heretofore part of the possessions of the *Abbey of Margam* (which the plaintiff did not admit), the same was one of the lesser abbies; that therefore the lands belonging thereto were not discharged from the payment of tithes; and that the defendants claimed some interest in the said tithes, but had refused to discover the particulars thereof, or how they made out the same. The bill therefore prayed a discovery of the premises, and that the defendants might be decreed to account with the plaintiff for the single value of the said tithes.

The defendant *Vernon* said, that on search at the first fruits office it appeared, that *Neath* was a rectory, and *Llantwichebach* juxta *Neath* a vicarage; that they were no way connected; that the plaintiff was rector of *Neath* and vicar of *Llantwichebach*; that the defendant *Thomas* and others were tenants to him, *Vernon*, and his wife; that by a grant dated the seventeenth of *August*, in the second year of his reign, *Edward the Sixth* gave and granted to *Sir J. Henneage* and others all those the manors of *Resolven* and *Court Colman*,
with

with all and singular their rights, &c. to the late monastery of *Margam* belonging, and late parcel of the possessions thereof, and also all and singular lands, meadows, pastures, &c. as therein mentioned, to hold the same to them, &c. for ever, yielding and paying, &c. as in the said grant is mentioned; that the tithes of the said several hamlets of *Resolven* and *Clyne* were parcel of the possessions of the monastery of *Margam* at the time of the dissolution thereof; that by several mesne assignments, the said manor of *Resolven*, with its appurtenances, vested in him, the defendant *Vernon*, and his wife; that they had held and enjoyed all the great tithes of the said manor, and also one moiety of all small tithes in the hamlet; and that the plaintiff, as vicar, was entitled to the other moiety of the small tithes thereof. The defendants further said, that they were entitled to, and had from time to time from the date of the said grant held and enjoyed one moiety of the tithes, both great and small, arising in the hamlet of *Clyne*; and that the plaintiff, as vicar, was only entitled to the other moiety.

EDWARDS
against
THOMAS.

The defendant *Barbara Vernon*, the said defendant's wife, stated the several particulars which were mentioned in his answer.

The defendant *Thomas* and others said, that they were tenants and undertenants to the other defendants; and spoke to the like purport as the other defendants; and said, that they had rendered to the plaintiff the half part of the said tithes; and they set up a *modus* of one penny for all garden stuff; and insisted, that the moiety thereof which was due to the plaintiff had been duly paid to him, and the other moiety to the defendant *Vernon*.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and upon hearing counsel for all parties; and reading, on behalf of the plaintiff, several depositions of witnesses; a grant under the great seal, dated the fifteenth day of *August*, in the second year of *Edward the Sixth*; the ministers accounts from the augmentation office from *Michaelmas*, in the twenty-seventh year of *Henry the Eighth*, to *Michaelmas*, in the twenty-eighth year; an indenture dated the tenth of *September*, in the second year of *Edward the Sixth*, signed *Thomas Heneage, William Willoughby*; an indenture dated the thirty-first of *August*, in the fifth year of *Edward the Sixth*, signed *James Gunter, William Gunter*; an indenture dated the tenth of *July*, in the twelfth year of *James the First*, signed by *Robert Gunter* and others; an indenture dated the fourth of *September*, in the third year of *Charles the First*, signed *Robert Thomas, &c.*; an indenture dated the first of *June* 1668, signed *B. Mansell* and others; an indenture of lease, dated the thirtieth of *January* 1707, from *Sir T. Mansell* to *Catherine Seys*; an indenture of assignment of the said lease from *J. Council*, administrator of the

EDWARDS
against
THOMAS.

said *Catherine Seys*, to *B. Jenkins*, dated the thirtieth of April 1721 ; and on full debate of the matter ;

THE COURT dismissed the bill with costs.

EASTER TERM
21. GEO. 3.

ALLIX against PITMAN.

Wiltshire, 7th May 1781.

The vicar of *Mere*, in *Wiltshire*, is entitled to the tithes of lambs, hops, wool, grass seeds, and agistment of barren cattle in kind ; but he is only entitled to 2d. a cow ; 4d. a calf ; 1d. an ancient orchard ; 1d. an ancient garden ; and 1d. a-yard in lieu of the tithes of milk, calves, fruit, garden stuff, and poultry on *Charnage Farm*.

THE vicar of *Mere*, and peculiar jurisdiction united and annexed to the deanery of *Sarum*, claimed the small tithes yearly arising within the said parish and peculiar jurisdiction, particularly of *Charnage Farm*, otherwise *Chaderwick Farm*.

The defendant admitted, that the plaintiff was vicar of *Mere* ; and that he occupied *Charnage Farm* ; and insisted on certain *modus*es in lieu of cows, calves brought forth in the parish, ancient orchards, gardens, and back sides payable at *Lady Day* yearly ; and said, that he was ready to satisfy and pay the plaintiff for the same accordingly.

The plaintiff replied ; the defendant rejoined ; and witnesses were examined on both sides ; and upon hearing counsel for both parties ; and upon reading the several proofs taken in the cause for the plaintiff ; and entries out of a book marked A, containing offerings, &c. ; a receipt, dated the fourth of *January* 1756 ; and on full debate of the matter ;

THE COURT ordered the deputy to take an account of what was due for the tithes of agistment, lambs, wool, hops, and ray and other grass seeds during the time demanded by the bill, and the said defendant to pay the plaintiff what should appear to be due to him upon such account.

THE COURT further ordered issues to try,

FIRST, “ Whether, from time immemorial, there hath been
“ paid or used or accustomed to be paid by the owner and occupier for the time being of the farms and lands called *Charnage Farm*, otherwise *Chaderwick Farm*, within the parish of
“ *Mere*, in the pleadings mentioned, to the vicar of the said
“ parish for the time being at *Lady Day* yearly, and in every
“ year, or so soon after as demanded, for every cow kept and
“ depastured on the said farm and lands within the said parish,
“ the sum of twopence in lieu and full satisfaction of all tithes
“ in kind arising from such cow.”

SECONDLY, “ Whether, from time immemorial, there hath
“ been paid, &c. for every calf brought forth on the said farm
“ and lands within the said parish the sum of fourpence, in lieu
“ and full satisfaction of all tithes in kind arising from such
“ calf.”

THIRDLY, "Whether, from time immemorial, there hath
 " been paid, &c. for every ancient orchard of the said farm
 " and lands the sum of one penny, in lieu and full satisfaction
 " of all tithes in kind arising from the fruit and produce of such
 " orchard."

ALLEN
 against
 FITMAN.

FOURTHLY, "Whether, from time immemorial, there hath
 " been paid, &c. for every ancient garden belonging to the said
 " farm and lands, within the said parish, the sum of one penny,
 " in lieu and full satisfaction of all tithes in kind arising from
 " the garden stuff and produce growing therein."

FIFTHLY, "Whether, from time immemorial, there hath
 " been paid, &c. for every back side of the said farm and lands
 " the sum of one penny, in lieu and full satisfaction of all tithes
 " in kind arising from eggs and poultry, by them kept within
 " the said backside."

The parties agreed, that the said five issues should be taken,
 as confessed by the plaintiff in favour of the defendant; and on
 the twelfth of *February* 1783, they were directed to be so taken
 accordingly.

JACKSON *against* WOODROFFE.

EASTER TERM,
 21. GEO. 3.

Surry, 8th May 1781.

THE bill stated, that the vicar of the vicarage of the parish
 and parish church of *Farnham*, in the county of *Surry*,
 had been for a long time, and then was entitled, by endowment
 or prescription, to all small tithes arising in the said parish and the
 titheable places thereof; that on the fourteenth day of *March*
 1769, the plaintiff was instituted and inducted into the said
 vicarage, and had ever since been the vicar thereof, and as such
 entitled to all small tithes which had arisen since the time afore-
 said, within the limits of the said vicarage; that the defendant
Allen during that time had occupied, and was also owner of
 divers lands in the parish, and had had from the said lands in
 each year, during the plaintiff's incumbency, large quantities of
 hops; that he had carried away the same without setting out
 the tithes thereof, or making him any satisfaction for the same,
 though he had frequently applied to him for an account of the
 tithe of such hops, and for a satisfaction for the same, but
 which he had refused, pretending that he, the plaintiff, was
 not entitled thereto: whereas the plaintiff charged, that the
 vicar of the said parish had immemorially received all species of
 small tithes arising within the said parish, or a compensation for
 the same, except the tithe of hops; that hops had been
 first introduced in the said parish in modern times; and that in
 case the same had been paid to the defendant the bishop of *Ox-*
ford,

The archdeacon
 of *Surry*, as rec-
 tor of *Farnham*,
 in the said coun-
 ty, and his les-
 sees, are entit-
 led to the tithes of
 hops arising in
 the said parish,
 and not the vi-
 car thereof, who
 is only entitled
 to the tithes of
 such hops as are
 grown in an-
 cient gardens.
 See Chitty v.
 Reeve, vol. i.
 page 251.

JACKSON
against
WOODROFFE.

ford, or his lessee, they had been so paid by mistake, and under an apprehension that the tithe of hops was a great tithe. The bill therefore prayed, that the defendants might answer the premises, and set forth what hops had arisen from the lands occupied by the defendant *Allen* in each year, since the plaintiff became vicar of the parish, and the value of the tithes thereof, distinguishing the produce of each year, whether the said defendant, the *Bishop of Oxford*, or the defendant *Woodroffe*, had collected such tithes, and to what value, and received any, and what satisfaction for the same, and from whom; that the plaintiff's title to the tithe of hops might be established against the said defendant the *Bishop of Oxford*, in right of his archdeaconry, and all claiming under him, by the decree of this court; and that the said defendants might account with the plaintiff for all the tithe of hops which had accrued due during the plaintiff's incumbency, and which had been abstracted or received by them.

The defendant *Woodroffe* said, that soon after the dissolution of monasteries in the reign of *Henry the Eighth*, certain parishes in the counties of *Surry* and *Hants* were annexed to the bishoprick of *Winton*, and afterwards appropriated to the archdeaconry of *Surry*, and amongst others the parishes of *Farnham*, *Bentley*, *Elsted*, *Frensbam*, and *Seale*, with all the tithes, both great and small, of the said parishes or chapelries respectively, reserving a rent to the bishop of *Winton* and his successors; that the archdeacon appointed ministers to perform divine service in the said parishes; that the said ministers, by themselves or their lessees, still enjoyed the tithes, both great and small, of the said parishes or chapelries of *Bentley*, *Frensbam*, *Elsted* and *Seale*, the lessees of the said archdeacon of *Surry* nominating the ministers, and paying them a yearly stipend; that it could not be ascertained at what time the officiating minister who claimed the title of vicar was appointed at *Farnham*, but that whenever such minister was nominated, certain portions of tithes were appropriated for his support and maintenance, and which portions the said plaintiff, as the successor of the said officiating minister, received and enjoyed, but that the said officiating minister was first permitted so to do long within the time of legal prescription; that the defendant *Allen* had occupied since the plaintiff's induction, &c. and was also proprietor of lands in the parish, and had gathered therefrom hops, which he cured and carried away without setting out the tithes thereof for the plaintiff; that he was well justified in so doing, as the plaintiff could not set up any good title to the tithes of hops gathered in the parish, except to the tithes of such hops as had been gathered in and from ancient gardens and orchards therein; that if the defendant *Allen* had gathered any hops since the said plaintiff's incumbency otherwise than in and from ancient gardens or orchards, that the tithes thereof ought to have been rendered or accounted for

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to him, as lessee of the said impropriate rectory of *Farnham*, by virtue of a lease, dated the twenty-fifth day of *June* 1764, granted to him by the then archdeacon of *Surry*; and he insisted, that the said archdeacon and his predecessors had by themselves, their lessees, or agents received the tithes of hops, except of such hops as had been raised in ancient gardens and orchards for upwards of one hundred and eighty years past, and during the last one hundred and forty years without interruption. He admitted, that during the plaintiff's incumbency, *he*, the defendant, had annually received the sum of six pounds, six shillings from *Allen*, as a composition for the tithes of hops gathered by him from certain fields within the said parish, and which he insisted he was well entitled to. He said, that he could not set forth whether the vicarage was regularly endowed with any or what species of small or other tithes. He admitted, that he had given out that the tithe of hops was not included in the possessions of the vicarage, by reason of the long and uninterrupted possession of the tithe of hops growing in fields within the said parish, by the rectors thereof, or their lessees. He said, that he could not set forth whether the officiating minister or vicar had immemorially or at any time received all or any species of small or other tithes arising within the said parish, except as before mentioned; but he denied, that the said vicar had for any time uniformly received the tithes of hops growing in fields within the said parish, or any composition for the same; and believed it would appear from depositions on oath, that hops were first planted in fields within the said parish in the year 1586. He also denied, that the tithe of hops had at any time been paid to him, or to the defendant the *Bishop of Oxford*, or his predecessors by mistake; but insisted, that such tithe as had been paid was duly paid and accounted for, they being well entitled, as aforesaid, to receive the same. He denied, that he, or any other person to his knowledge, had in his possession any endowment of the said vicarage, or copy, or extract thereof, or had been informed where the same, or any evidence respecting such endowment, or the said plaintiff's right to such tithes might be found; and said, that he believed that no endowment of the said vicarage was extant, for that after diligent enquiry no such was to be found, and therefore he did not believe that any such endowment had ever been made. He also said, that soon after hops were first planted in the arable fields in the said parish, *Mr. Curren*, the then vicar or officiating minister, set up a claim to the tithe of hops, and the same having been demanded by the then lessee of the rectory of the said parish, or his undertenants, an action was brought to determine to whom the said tithes belonged; that on the trial thereof a certain book was produced by one *W. Green*, whose father had been for a long time tenant of the said vicarage, by which it appeared what tithes belonged to or had been paid to the vicar;

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that a verdict and a judgment was given in the said action for the rector; and that he, the defendant; was entitled under such right to retain the tithes of all the hops not planted or gathered in or from some ancient garden or orchard within the said parish, and denied that the same was in prejudice to any right of the said plaintiff. He said, that the vicar having been permitted to receive certain small tithes, and the ancient gardens and orchards having by such permission yielded tithe to the vicar, the said vicar might, for ought he knew to the contrary from the time of his appointment, have uninterruptedly enjoyed the tithes of hops arising from such of the said ancient gardens and orchards as were converted to hop plantations, and which he believed were about thirty acres, and for which the planters paid to the vicar of the said parish a composition of two pounds an acre. He also insisted, that the vicar had received the tithe of hops raised in the ancient gardens, but not of hops raised in fields; and admitted, that the tithe of hops raised in fields in the said parish annually amounted to a very considerable sum of money. He also admitted, that there had been determinations relative to the tithe of hops within the said parish, whereby the right of the rector had been established, for that it appeared from a record in the court of king's bench, that a vicar of *Farnham* did set up a claim to tithe hops received by the lessees of the archdeacon of *Surry*, in the third year of the reign of *King James the First*; and that the issue roll between the same parties had been found, and that it appeared therefrom, and also from other evidence, as well as the continuance of the possession, that a verdict was given in favour of the lessee. He said also, that it appeared that the said vicar, in the tenth year of the said king, appealed to the court of arches where a sentence appeared to have been given against him. He further said, that in the reign of *Charles the First*, *P. Clapham*, then vicar, having entered into some of the grounds from which the rectorial tithes of hops accrued contiguous to those grounds from which he received the tithes which he claimed as vicarial, and having seized the tithes due to the then lessee of the archdeacon, he was prosecuted for such act; and that the then *Bishop of Winton* interposed and recommended, as means of peace, that the boundaries of the ancient gardens and orchards might be more distinctly marked out, apprehending, as the defendant believed, that the vicar's claim could not extend beyond those limits, in which proposal the said vicar is said to have acquiesced in, for that from the time of such suit in 1631 to the present time, the lessees had uninterruptedly enjoyed the tithe of hops in the said parish, except as aforesaid. He said, that he became entitled to the beneficial interest in the lease before mentioned, in consequence of his marriage in a family which had held the same ever since the time of the prosecution before mentioned, without being molested by any claim from any persons as vicar; that the defendant and the said family

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mily had always a confidence in their right to the tithe of hops, except as before-mentioned, which had for so long a series of years been the principal part of the tenure, and he, confiding in the security of the said right, had expended in fines and reserved rents the sum of seven thousand pounds, a very large proportion of which was paid in consideration of the tithe of hops. He insisted, that the oldest persons in the parish had declared that they never heard of the tithe of hops being paid to the officiating vicar, except for the ancient gardens and orchards, and believed, that tithe of hops, planted in fields, had been usually and still was paid to the rectors of certain parishes in the county of *Kent*. He said, that he believed, that a *Mr. Curren*, vicar of the said parish, endeavoured, by collusion with some of the parishioners, to deprive the rector or his lessee of the tithe of hops growing in the arable fields within the said parish; and that the same was detected, and the rector's right established by one or more verdicts at law; and he insisted, that he ought not to account with the plaintiff for all the tithes of hops accrued during his incumbency, and which had been retained and received by him under such right, and he hoped that he should not be disturbed in the possession of the said tithes.

The defendant the *Bishop of Oxford* admitted, that he was archdeacon of the county *Surry*, and denied the plaintiff's right, as vicar, to the tithes demanded by his bill, in like manner as insisted on by the defendant *Woodroffe*; and also stated and relied on the same facts. He insisted, that the archdeacon of *Surry* and his predecessors, as rectors of the said parish, had by themselves, their lessees, or agents, received the tithes of hops growing in the said parish and titheable places thereof, except as aforesaid, for upwards of one hundred and eighty years past, and during the last one hundred and forty years without interruption. He said, that he had not collected any part of the said tithes of hops claimed by the plaintiff, or received any satisfaction for the same, otherwise than by the reserved rent in the lease of the said impropriate rectory of *Furubam*, dated the twenty-fifth of *January* 1764, and granted to the defendant *Woodroffe*, but that he had collected the same, or received some satisfaction in lieu thereof, he being well entitled so to do, under the said lease and right before-mentioned; and he hoped that his said right would not be prejudiced by any decree of the court.

The defendant *Allen*, by his answer filed without oath pursuant to order, said, that the plaintiff was duly instituted, &c. into the aforesaid vicarage, but knew not that he, as vicar, was entitled, by endowment, prescription, or otherwise, to all the small tithes arising therein, but that when the officiating minister, who claimed the title of vicar of the said parish, was appointed,

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appointed, certain portions of the said tithes were appropriated for his support and maintenance, and which he had and still received and enjoyed. He admitted, that since the plaintiff's induction, &c. into the said vicarage he had occupied, and was also owner of divers lands within the said parish, and in each year had had and gathered therefrom some hops, and had cured and carried away the same without setting out the tithes thereof for the plaintiff, or making him any satisfaction for the same; and he admitted, that he had applied to him for an account of the value of the tithes of such hops, and for a satisfaction for the same, but being claimed by the defendant *Woodroffe*, he had refused to comply therewith, and had annually paid the said *Woodroffe* six pounds, six shillings, as and for a composition for the tithe of hops planted and gathered by him in and from certain fields within the said parish and the titheable places thereof.

Soon after the defendant *Woodroffe* had put in his answer he died, whereby the suit and proceedings, as to him, became abated, but the plaintiff filed his *bill of revivor* against his executors in order to have the suit revived: They appeared and put in their answer, whereupon the suit and proceedings were accordingly revived pursuant to order obtained for that purpose; and the plaintiff having filed a replication to the several answers of the defendants *G. Woodroffe* deceased, the *Bishop of Oxford*, and the executors of the said *Woodroffe*; and the *Bishop of Oxford* rejoined thereto; and witnesses were examined on both sides; and now upon hearing counsel several days on both sides; and reading, by consent, an examined copy from a book in the registry of the *Bishop of Winton* of an admission of a vicar to the vicarage of *Farnham* in 1295; like admissions in the years 1375, 1488, 1520, 1557, 1709; the plaintiff's admission thereto in 1769; and also several depositions taken in the cause for the plaintiff; and reading an order to prove exhibits; and the following evidence for the defendants, viz, several entries, dated in 1331, out of a book in the custody of the *Bishop of Winton*, intitled, "the Register Book of *John Stretford*, bishop of *Winton*;" and also several entries relative to the archdeaconry of *Surry*, and the vicarage of *Farnham*, from the ecclesiastical survey, taken in pursuance of an act of parliament passed in the twenty-sixth year of *Henry the Eighth*; and also reading a copy of a record of an issue in the court of king's bench at *Westminster*, in *Trinity Term*, in the third year of *James the First*, *Fidler v. Currer*, clerk, intitled *Surry Roll* 1115; and reading the depositions of several witnesses; and on debate of the matter; it was ordered to stand over for the opinion of the Court; and the cause standing accordingly to this day;

THE COURT ordered the bill to be dismissed as against the *Bishop of Winton* and the executors of *Woodroffe* with costs to be taxed, and as against *R. Allen* with forty shillings costs, according to the course of the court.

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SKYNNER, *Chief Baron.*
EYRE, *Baron.*
HOTHAM, *Baron.*
PERRY, *Baron.*

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EASTER TERM
22. GEO.

Northumberland, 17th May 1781.

THE bill stated, that the plaintiff, in the month of July 1761, was lawfully instituted and inducted into the rectory of *Bothall*, with the rectory of *Shipwash*, otherwise *Shipwish*, in the county of *Northumberland*, annexed; that the advowson is now the estate of the defendant the *Duchess of Portland, &c.*; that the said parish or united parishes is or are of large extent, and comprise several distinct townships or hamlets; that in each or most of them there are particular lands containing a considerable quantity in the whole called *demefne lands*; that the plaintiff, as rector thereof, was well entitled to the tithes, and particularly the tithes in kind of hay, clover, grass, and corn, arising therein; that the defendant *J. Cowle* and others, farmers, had, since the first of May 1768, occupied land in the parish of *Bothall* called *the demefne lands* belonging to the defendant the *Duke of Portland*, either in fee simple or for life with remainder to his son; that they had yearly mowed the grass and reaped the corn thereon; that they had made the grass into hay; that they had many other titheable matters thereon; that he had several times, in a friendly manner, applied to them to come to a fair and just account with him concerning the tithes thereof, except on certain lands called *the Coney Garth, Earsden Forest, and the Peighills*, in respect whereof the plaintiff admitted *modus* were payable to him, and to pay him the full value thereof, but that they had refused to comply with such request; that the several sums of six shillings and eightpence and one pound were yearly payable by the occupiers of *the Coney Garth, Earsden Forest, and the Peighills*, as *modus*, in lieu of the tithes thereof, viz. six shillings and eightpence for *the Coney Garth Farm*, with a cottage, and one pound for *Earsden Forest* and *the Peighills*, with a cottage thereon; that the said sums were not paid in lieu of any tithe arising on other lands in the parishes; that tithes had been at various times within memory paid in kind for all or most of *the demefne lands*; that all or most of the matters aforesaid appear by many receipts, papers, or writings in the custody of defendants the owners,

Therefor of the parishes of *Bothall* and *Shipwash*, in *Northumberland*, is only entitled to a *modus* of 6s. 8d. a year at *Lady Day*, in lieu of the tithes of *Bothall Demefnes*, and to 20s. a year at *Michaelmas*, in lieu of the tithes of *the demefne lands* in the chapelry of *Hebron*.

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owners, and the defendants the occupiers; that they had refused to discover in what hamlets or townships the particular lands occupied by them were situated, or the quantities or values of the titheable matters they respectively had thereon. The bill therefore prayed, that the defendants might answer the premises, and the right of the plaintiff, as rector, to the tithe of hay, clover, grass, corn, and all other produce of the said lands called by the general name of *the demesne lands*, and not by any of the aforesaid particular names of *the Coney Garth*, *Earsden Forest*, and *the Peighills*, might be established; that an account might be taken of all the tithes of hay, corn, and other produce thereof, from the first of *May* 1768; and that the defendants the occupiers might be decreed to pay to the plaintiff what shall appear to be due to him for the same.

The defendants the occupiers admitted that the plaintiff was rector, but said, that he was not entitled to the tithes *in kind* of hay, clover, grass, corn, or other produce of *Bothall demesnes*, in the parish of *Bothall*, and insisted, that a *modus* of six shillings and eightpence had been immemorially payable by the occupiers thereof to the rector, in lieu of all tithes arising thereon; that the said *demesne lands* contained two thousand nine hundred acres; that the said *modus* had been immemorially paid by the occupiers or some of them on the behalf of all the occupiers thereof at *Lady Day* in each year; that the rector had accepted the same immemorially by himself, his lessee, or tenant; that such *modus* had been usually paid on behalf of all the occupiers of *the demesne lands* of *Bothall* by the occupiers of two cottages within *the demesne lands* in a place called *the Coney Garth*, or of one of the said cottages. They further insisted, that a *modus* of twenty shillings a-year had been immemorially payable by the occupiers of *the demesne lands*, in the chapelry of *Hebron*, at *Michaelmas*, in lieu of all manner of tithes arising in the said demesne lands; that such *modus* of twenty shillings had been usually paid on behalf of all the occupiers of the said last-mentioned *demesne lands* by the occupiers of certain lands called *Earsden Forest* and *the Peighills*, parcel of *the demesne lands* in the chapelry of *Hebron*. The defendants set forth the several farms they occupied in the said rectories as tenants to the *Duke of Portland*, which were parcel of *the demesne lands* of *Bothall*, in the chapelry of *Hebron*, and the several titheable matters they had had thereon, together with the ancient abutments and boundaries of *Coney Garth*, *Earsden Forest*, and *the Peighills*, and insisted, that the said *moduses* had always been paid and received in lieu of all titheable matters arising upon *Bothall demesne*, and all other *the demesne lands* in the chapelry of *Hebron*.

The defendant the *Duke of Portland* for himself, and as guardian to his son an infant, said, that some of the lands in the rectories were parcel of *the Coney Garth*, *Earsden Forest*, and *the Peighills*; that he was entitled thereto for ninety-nine years if

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his mother should so long live, with remainder to himself for life, and after his death to his son in tail male; that the plaintiff was not entitled to the tithes in kind for any hay, clover, grass, or corn, or other produce whatsoever arising from any of the lands called *Bothall demesnes*, or from any of *the demesne lands* in the chapelry of *Hebron* belonging to him and his son; and he insisted on the *modus* of six shillings and eightpence and twenty shillings; and, denying that the sum of twenty shillings paid by the occupiers of *Earsden Forest* and *the Peighills* had been at any time paid solely for the tithes arising on the said lands, insisted, that the same was payable in lieu of all tithes for all other *demesne lands* in the chapelry of *Hebron*; and averred, that tithes had not, at any time within memory, been delivered in kind for any titheable matters arising on any of *the demesne lands*, or been compounded for: and he set out the ancient abuttals and boundaries of *Earsden Forest* and *the Peighills*.

The infant son of the *Duke of Portland* submitted such estate and interest as he should appear to have in the matters in question to the protection of the Court.

The defendant the *Dowager of Portland* said, that she was seised of the advowson of the rectories for her life, and during her viduity; that the plaintiff was not entitled to tithes in kind for the lands in *Bothall demesnes*, in the chapelry of *Hebron*, belonging to *the Duke of Portland*, but that the *modus* of six shillings and eightpence and twenty-shillings were due to the rector in lieu thereof.

The plaintiff replied; the defendants rejoined; and witnesses were examined on the part of the defendants; and upon hearing counsel for all parties;

THE COURT ordered issues to try,

FIRST, "Whether a *modus* or annual payment of six shillings and eightpence hath yearly, from time immemorial, been payable and paid by the occupiers of lands, called *Bothall demesne lands*, to the rector of *Bothall*, in the county of *Northumberland*, for the time being, at *Lady Day* in every year, in lieu of all manner of tithes arising, growing, or renewing upon the said *demesne lands*."

SECONDLY, "Whether a *modus* or annual payment of twenty shillings hath yearly, from time immemorial, been payable and paid by the occupiers of *the demesne lands* in the chapelry of *Hebron* and parish of *Bothall*, to the said rector of *Bothall* for the time being at *Michaelmas*, for and in every year in lieu of all manner of tithes arising, growing, or renewing within the said *demesne lands*."

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The defendants in equity to be plaintiffs at law; the cause to be tried by a special jury; and if the said jury should find any other *modus*es have been paid for the said *demefne lands* than those before mentioned, or any special matter should arise on the trial, the judge to be at liberty to indorse the same on the *postea*; and further directions to be reserved until after trial.

The issues were tried by a special jury, and the jurors found both the said issues in favour of the *modus*es.

The cause came on the tenth of *February* 1783 to be further heard upon the *postea*, and upon hearing counsel, and reading the decree and *postea*,

THE COURT ordered the bill to be dismissed with costs.

SKYNNER, *Chief Baron*,
EYRE, *Baron*.
HOTHAM, *Baron*.
PERRY, *Baron*.

MICH. TERM,
22. GEO. 3.

BURSLEM against DICKEN (a).

Salop and Staffordshire, 20th November 1781.

The vicar of Drayton in Hales, in Salop and Staffordshire, is only entitled to certain *modus*es in lieu of certain tithes.

THE vicar of Drayton in Hales, in the counties of Salop and Stafford, claimed the small tithes of the parish, particularly the tithes in kind of turnips, agistment of barren and unprofitable cattle and sheep, milk, and calves bred therein, or in the titheable places thereof called Drayton, Little Drayton, Longslow, Sutton Woodcaves, Hales Bloor, and Alington.

The defendants admitted, that the plaintiff was vicar of Drayton in Hales, but insisted upon various *modus*es, in lieu of the tithes demanded by the bill, and which they set forth in their answers.

THE COURT, by consent of all parties, ordered the bill to be dismissed, but without costs on either side.

(a) This cause came before the court on the seventeenth of May 1781; but the defendant's counsel objected to the plaintiff's proceeding for want of proper parties; and the plaintiff's counsel, that the *modus*es in the answer were not properly laid; and THE COURT, by consent, ordered the cause to stand over,

without payment of costs on either side, with liberty to the defendants to amend their answers respecting the *modus*es; and the plaintiff to amend his bill, by adding the impropriator or other parties, with proper charges as he should be advised; the plaintiff to amend the defendant's office copy of the bill.

ROWLEY *against* HUDSON.*Yorkshire, 2d July 1781.*TRIN. TERM,
21. GEO. 3.

THE vicar of *Wath upon Derne* stated by his bill, that in the year 1410 the church of the said parish was appropriated to the master of the hospital of *Saint Nicholas*, in *Pontefract*, and a perpetual vicarage thereupon erected therein; that it was settled, that the master should have the tithes of corn, grain, and hay, and all mortuaries; and that all other tithes, oblations, obventions, emoluments, and three loads of hay should belong to the vicar; that such appropriation still continued in force; that the defendant *Hudson* and several others had, ever since the plaintiff's induction to the said vicarage in the month of *May 1761*, been and then were in possession of lands, in the townships of *Wath*, *Brampton*, *Byerley*, and *Swinton*, in the said vicarage and parish of *Wath*; that they had thereon in each year fruit, turnips, potatoes, clover, rape, hemp, flax, line seeds, foals, calves, wool, lambs, pigs, geese, and barren cattle; that the tithes thereof were due to the plaintiff as vicar; but that they had refused to set out or to make him any satisfaction for the same, pretending that the said tithes were due to the impropiators the dean and chapter of *Christ Church*, in *Oxford*, or to the *Marquis of Rockingham* their lessee, who claimed a right and title thereto. The bill therefore prayed, that the plaintiff's right, as vicar, to the tithes of all fruit, turnips, potatoes, clover, rape, hemp, flax, line seeds, foals, calves, wool, lamb, pigs, geese, and agistment of barren and unprofitable cattle arising on any lands in the vicarage, in the occupation of the defendants or any of them might be established; an account taken of the same since the death of the last vicar; and that the defendants might severally pay what should appear to be due thereon.

The vicar of *Wath upon Derne*, in *Yorkshire*, is entitled to the tithes of fruits, turnips, potatoes, clover seed, rape seed, hemp seed, flax seed, line seed, wool, lambs, pigs, geese, and three loads of hay, in kind; but for the grafs of certain lands, whether mowed or fed, he is only entitled to the *modus* stated, and to 1d. for every foal; 1d. for every strap milch cow; and 1½d. for every calving cow, in lieu of the tithes of foals, milk, and calves.

The defendant *Hudson* said, that if any such endowment as stated in the bill had ever been made, it had long been void or annulled, either by the disappropriation of the church, or otherwise; the rectory having, for a considerable number of years, belonged to the dean and chapter of *Christ Church*, or to their lessee; that some of the tithes alledged to have been received by the vicar had not, within the memory of man, been received by the plaintiff or his predecessors, particularly the tithes of agistment of barren and unprofitable cattle, fruit, turnips, hemp, flax, potatoes, clover, rape, and line seeds, or any satisfaction made for the same, except to the impropiators or their lessee. He admitted, that from *May 1772* he had been owner and also occupier of lands, and insisted, that he and all the former owners and occupiers thereof had immemorially paid to the rectors of the said rectory, or their lessees, certain *modus* in lieu of the tithes of grafs, whether made into hay or fed

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fed by barren an unprofitable cattle, viz. sixpence for the farm and lands held by him of *Mr. Cooke* containing thirty-seven acres, and one penny for the lands whereof he was owner being four acres. He also admitted, that he had depastured milch cows; and insisted, that all the former owners and occupiers of the said lands had immemorially paid at *Easter* to the former vicars the following *modus*: for every foal, one penny; and for every cow being a strap milch cow, one penny; and for every such cow being a new calved cow, three halfpence, in lieu of the tithes of foals, milk, and calves.

The other defendants the occupiers put in their separate answers, and stated to the same effect as the defendant *Hudson*.

The defendant *the Marquis of Rockingham* said, that the dean and chapter of *Christ Church* in *Oxford*, being entitled to the rectory of *Wath*, by indenture dated the fourteenth of 1771, and which was renewed in 1778, demised to him all their said rectory or parsonage of *Wath*, with the hamlets, members, appurtenances, and all and singular barns, &c. glebe lands, tithes of corn and hay, and all other tithes, fruits, and all and singular other profits, &c. thereto belonging (except and reserved to them and their successors the patronage and gift of the vicarage of *Wath*, the vicarage house and all lands, tithes, fruits, oblations, obventions, and other emoluments to the same belonging) to hold for twenty-one years, at forty-eight pounds *per annum*, the old accustomed rent; that, by virtue of the said indenture, some of his agents, on his behalf, entered upon the said rectory and glebe lands so demised, and became possessed thereof, and got in and received the rents and profits of the tithes of corn and hay, and other tithes and payments in lieu thereof, &c.; that he knew not what tithes or dues in particular the plaintiff was entitled thereto, but he said, that he believed that no hemp had, within the memory of man been produced from any lands in the parish; that no tithes of flax, potatoes, rape seed, line seeds, agistment of barren cattle or fruit (save as to fruit in a few instances) had been received by the plaintiff as vicar thereof; that he did not claim to be entitled to any other titheable matters or dues or payments in lieu thereof, save as lessee of the said rectory, under such lease as demised to him.

The dean and chapter of *Christ Church* admitted, that in 1710 the church of the parish of *Wath* was appropriated, and a perpetual vicarage erected; that the master of *Saint Nicholas' Hospital* was to have the tithes of corn, grain, hay, and all live mortuaries; and that all other tithes, oblations, obventions, and emoluments whatsoever of the whole of the said parish, and belonging to the said church, and also three loads of hay should belong

belong to the vicar, as by the instrument, whereby such appropriation and endowment in the consistory court of *York*, remaining in full force, would more fully appear. They also admitted, that the plaintiff was lawfully presented to the vicarage, and entitled to receive the tithes, which by virtue of the said ancient endowment or otherwise of right belonged thereto. They further said, that they were seised of the rectory, with the tithes of corn, grain, hay, and live mortuaries, and all profits, dues, and emoluments whatsoever belonging thereto, and enjoyed as part thereof when the same was appropriated as aforesaid; that the same had been since enjoyed by them or their lessee; that they did not claim any right in the several titheable matters aforesaid, to which the plaintiff, by virtue of the said endowment, was lawfully entitled as belonging to him in quality of the vicar of the said parish; but they denied, that he was entitled to any of the titheable matters aforesaid arising within any of *the glebe lands*, whilst the same were in the occupation of them or their lessee; in case it should appear, that the said vicar and his predecessors had not at any time taken or received tithes, or any satisfaction in lieu thereof, for the titheable matters and things arising on the said glebe lands; but whether the same had been so taken or received or not, they were unable to set forth, inasmuch as the said rectory and glebe lands, with all profits and emoluments thereunto belonging, had been for many years past altogether in the occupation of their lessees; and they said, that they were altogether strangers to the several other matters in the bill mentioned.

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The plaintiff replied, except to the dean and chapter; the defendants rejoined; and witnesses were examined for both parties; and upon hearing counsel on all sides; and on reading for the plaintiff an attested copy of an endowment of the vicarage of *Wath*, dated the seventh of *August* 1410; the minister's accounts from the augmentation office, in the thirty-fourth year of *Henry the Eighth*, of the rectory of *Wath*; a particular for a grant from the said office, dated the first of *October*, in the thirty-eighth year of the said king *Henry the Eighth*, of the said rectory of *Wath*; and on reading the several depositions; and full debate;

THE COURT ordered a trial at law on the following issues,

FIRST, " Whether, from time whereof the memory of man
" is not to the contrary, the several *modus*es or annual payments
" of sixpence and one penny, paid by the defendant *J. Hudson*;
" and four shillings and threepence, paid by the defendant *J.*
" *Garwtress*; and three shillings and twopence, paid by the de-
" fendant *J. Briggs*; and one shilling and one penny by
" *J. Payne*; and elevenpence, one penny, and three halfpence,
" paid by the defendant *J. Lyell*; and sixpence halfpenny, paid
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“ by *M. Roberts*; and three shillings and fourpence halfpenny,
“ paid by *J. Mercer*; and one shilling and tenpence, by *W.*
“ *Jackson*; and two shillings and ninepence, by *R. Thompson*,
“ for and in respect of the several farms in their respective oc-
“ cupations, have been paid and payable, and ought to be paid
“ yearly and every year to the rectors of the said parish of *Wath*,
“ or to their lessee or lessees for the time being, for and in lieu
“ of the tithes of grass grown upon the said farms, in the occu-
“ pation of the said defendants respectively, whether such grass
“ was mowed and made into hay, or fed by barren and unpro-
“ fitable cattle.”

SECONDLY, “ Whether, from time whereof the memory of
“ man is not to the contrary, a *modus* of one penny hath been
“ paid and payable, and ought to be paid, yearly and every year,
“ at *Easter*, or so soon after as demanded, to the vicars of
“ the said parish for the time being, for and in lieu and full
“ satisfaction of the tithe of foals dropped within the said parish
“ and the titheable places thereof.”

THIRDLY, “ Whether, from time whereof the memory of
“ man is not to the contrary, the several *moduses* or annual
“ payments of one penny for every cow being a stript milch
“ cow, and the sum of three halfpence for every cow being a
“ new calved cow, have been paid and payable, and ought
“ to be paid, yearly and every year, at *Easter*, or so soon
“ after as demanded, by the owners and occupiers of lands
“ within the said parish, to the vicar thereof for the time being,
“ for and in lieu and in full satisfaction of the tithes of milk
“ and calves arising within the said parish or the titheable
“ places thereof.”

In the first issue, the defendant the lessee to be the plaintiff at law; and in the second and third issues, the defendants the owners and occupiers to be the plaintiffs; and *Rowley*, the vicar, defendant in all of them.

THE COURT further ordered *T. Hudson* and others to account for the tithes of all fruits, turnips, potatoes, clover, rape, hemp, flax, and line seeds, wool, lambs, pigs, and geese, for six years previous to the time of filing the bill; and the bill as against the dean and chapter of *Christ Church* to be dismissed with forty shillings costs.

On the sixth of *December* 1781, the vicar prayed, that the issues might be waived on payment of costs, and an account taken of what was due for the *moduses*, which was ordered accordingly; and the deputy remembrancer made his report, dated the fourth of *February* 1786; and on the twenty-eighth of *February* 1786, this cause came on to be heard on the report; when upon hearing counsel for all parties;

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THE COURT ordered the report to be confirmed with costs, to be paid by the defendant *Gawtress* and others; and the bill, so far as it demanded tithes in kind for the matters for which the *modus*es were payable, to be dismissed, with such costs as related thereto.

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against
Hudson.

SKYNNER, *Chief Baron.*
EYRE, *Baron.*
HOTHAM, *Baron.*
PERRY, *Baron.*

ASHBY *against* POWER.

MICH. TERM,
22. GEO. 3.

Leicestershire, 26th November 1781.

THE rector of *Barwell*, in the county of *Leicester*, claimed the great and small tithes yearly arising therein, particularly in the year 1777; and insisted, that he had, before *Old Michaelmas Day* 1776, given notice to the defendants to set out their tithes for the ensuing year in kind; that they had refused so to do, on pretence that *modus*es were payable in lieu thereof; but that no *modus*es of any kind existed in the said parish; that as evidence thereof, it appeared by a valuation taken of the rectory in the twenty-sixth year of the reign of *Henry the Eighth*, that the value of the tithes at that time amounted only to the sum of twenty-one pounds, one shilling, and sixpence; but that the *compositions* insisted on by the defendants amounted to a much larger sum; that the profits of the rectory had, during the present century at least, amounted, *communibus annis*, to three hundred and twenty pounds and upwards; that it appeared by sundry terriers, and other evidence, that he was entitled to all the tithes in kind within the whole of the parish and lordship of *Barwell*; and that if any agreement had been entered into by the defendants, or any of them, with some of his predecessors, for the payment of a composition in lieu of tithes, he was not bound thereby. The bill therefore prayed an account and payment.

The rector of *Barwell*, in *Leicestershire*, is entitled to the great and small tithes of the several farms called the *Old Estate*, *Green's Land*, the *Barber's Land*, *Gen's Land*, *Poleworth's Land*, *Preston's Land*, *Skinner's Land*, *Wright's Land*, *Johnson's Land*, *Aitway's Estate*, *Gisburn's Estate*, and *Noel's Estate*, in kind.

The plaintiff died before the defendants had put in their answers; but his widow, as executrix, filed her *bill of revivor*.

The defendants admitted, that they had, for several years past, respectively occupied lands in the parish of *Barwell* and the vill of *Stapleton*, and named the quantities thereof; that some time in *October* 1776, they had been respectively served with notices to set out their tithes in kind; and that they had refused so to do.

The defendant *E. Power* insisted, that the farm occupied by him consisted of three parcels of land, under the names of

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the Old Estate, Green's Land, and Barber's Land; that there had been immemorially paid, to *Michaelmas* 1776, to the rector of *Barwell*, by half-yearly payments, on *Lady Day* and *Michaelmas Day*, the following sums of money, in lieu of all tithes whatsoever arising upon the said several lands, viz. "For the
" *Old Estate*, four pounds, fifteen shillings; for *Green's Land*,
" seventeen shillings; and for *the Barber's Lands*, one pound,
" ten shillings; making together the sum of seven pounds, two
" shillings."

The defendant *George Allen* insisted, that for the farm occupied by him called *Gee's Land*, one pound, ten shillings; for *Polesworth Poor*, five shillings; for *his own lands*, three shillings; and for *Preston's Lands*, one pound, twelve shillings, and sixpence; making together the sum of three pounds, ten shillings, and sixpence; had been immemorially paid as aforesaid, in lieu of the tithes thereof.

The defendant *E. Darker* insisted, for her estate, on a *modus* of three pounds, eleven shillings.

The defendant *S. Smith* insisted, that for *Villers*, or late *Skinner's Land*, two pounds, fifteen shillings, and sixpence; *Wright's Land*, six shillings; and *Johnson's Land*, three shillings and sixpence, making together the sum of three pounds, five shillings, had been paid.

The defendant *J. Toon* insisted, that for his farm, part of the estate of *Mr. Ailway*, eight pounds and six shillings had been received down to the year 1769 as aforesaid, in lieu of the tithes. He also insisted upon an agreement made about *Lady Day* 1769 for payment of different sums of money for the said estate, as in the said answer was stated. He also insisted, that in respect of the close he rented of *Daniel Woodland*, and five other closes he had purchased of him part of an estate called *Gilburne's*, that no tithes whatsoever had ever been paid; but that, on the contrary, the owners and occupiers of the said entire estate had immemorially paid, to *Michaelmas* 1776, to the rector, by half-yearly payments as aforesaid, the sum of twenty pounds, in lieu of all tithes yearly arising upon the said entire estate. He also insisted on a *modus* of thirteen pounds payable as aforesaid for *Noel's Estate*, and for *Old Farm*, three pounds; and averred, that the said *moduses* had been accepted to *Michaelmas* 1776.

The defendant *J. Smith* insisted, that for *Blake's Land* and *Triswell*, the sum of three pounds, twelve shillings; for *Pole Meadow* and *Lee's*, one pound, six shillings; for *Thomson's Close*, ten shillings; for *New Close*, three shillings; and for *Ed. Biddle's Land*, sixteen shillings, making together the sum of six pounds, seven shillings, had been paid, in lieu of the tithes, to *Michaelmas* aforesaid.

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The defendants insisted on the said *modus*; and denied that they, or any former owner or occupier of lands within the said parish, had entered into any such agreement with the plaintiff's predecessors, as in the bill mentioned, for the payment of such compositions specified. They set forth an account of their titheable matters, and offered to pay the sums due in respect of such *modus*.

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The defendant *W. Leader* said, that four years ago he purchased of *D. Woodland* several acres of land, part of an ancient farm, and one entire estate in the parish; that the defendant *Ileech* had, during the four years, occupied of the said *D. Woodland* other part of the same estate; and that besides the lands occupied by them, there were comprised in the said ancient farm other quantities of land held by the defendant *Toon* and other persons; that in the month of *October* 1776, they had been served with written notices to set out their tithes, but had refused so to do, because that all the proprietors of the said ancient farm so purchased of the family of *the Gisburne's* by *D. Woodland* had immemorially paid to the rector twenty pounds a-year, in lieu of all tithes whatsoever arising thereon, to *Michaelmas* 1776.

The defendant *Gamble* said, that for fifteen years past he had occupied part of an ancient farm in the parish belonging to the family of *the Noels*, for which he set up a *modus* of thirteen pounds *per annum* payable as aforesaid.

They submitted to account for the said *modus*, and prayed the same benefit as if they had pleaded the same, &c.

Before any further proceedings were had, the defendants *E. Power* and *J. Smith* died; and the plaintiff filed her *bill of revivor* against their executors, who appeared, but did not file any answer thereto.

The plaintiff *Elizabeth Ashley* replied; the defendants rejoined; and divers witnesses were examined on both sides; and upon hearing counsel several days for all parties; and reading several proofs taken in the cause on the behalf of the plaintiff and of the defendants; and on full debate of the matter;

This cause was ordered to stand over for the judgment of the Court;

THE COURT ordered issues to try the following *modus*,
o wit,

FIRST, "Whether *E. Power* (late a defendant in this cause, but now deceased), and all and every other person or persons whose estate he had in a certain parcel of land called *the Old Estate*, containing, by estimation, one hundred and twenty acres of land, part of a certain farm or tenement and land

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~~Power.~~
 POWER.

“ lately occupied by the said *E. Power*, situate, lying, and being
 “ within the said parish of *Barwell*, in the county of *Leicester*,
 “ containing in the whole, by estimation, one hundred and sixty-
 “ three acres, have and had, from time whereof the memory of
 “ man is not to the contrary, been accustomed to pay, and have
 “ and hath paid, in every year, to the rector of the said rectory
 “ or parish of *Barwell* for the time being, or his farmer or
 “ appointee, by half-yearly payments, on the feast-days of the
 “ *Annunciation of the Blessed Virgin Mary* and *Saint Michael the*
 “ *Archangel*, or at such time or times after the said feast-days as
 “ required, the sum of four pounds, fifteen shillings, for and in
 “ respect of that part of the said farm and land called *the Old*
 “ *Estate*, in lieu, full satisfaction, and discharge of the tithes of
 “ all and singular the titheable matters arising, renewing, in-
 “ creasing and growing in and upon the said part of the said
 “ farm and lands called *the Old Estate*.”

SECONDLY, “ Whether the said *E. Power*, and all and every
 “ other person or persons whose estate he had in a certain
 “ parcel of land called *Green's Land*, containing, by estimation,
 “ twenty acres of land, part of a certain farm or tenement and
 “ land lately occupied by the said *E. Power*, situate, lying, and
 “ being within the said parish of *Barwell*, containing in the
 “ whole, by estimation, one hundred and sixty-three acres,
 “ have and had, from time whereof the memory of man is not
 “ to the contrary, been accustomed to pay, and have and hath
 “ paid, in every year, to the rector of the said rectory or parish
 “ of *Barwell* for the time being, or his farmer or appointee, by
 “ half-yearly payments, on the feast-days of *the Annunciation of*
 “ *the Blessed Virgin Mary* and *Saint Michael the Archangel*, or at
 “ such times after the said feast-days as required, the sum of
 “ seventeen shillings, for and in respect of that part of the said
 “ farm and lands called *Green's Land*, in full satisfaction and
 “ discharge of the tithes of all and singular the titheable
 “ matters arising, renewing, increasing, and growing in and
 “ upon the said part of the said farm and lands called *Green's*
 “ *Land*.”

THIRDLY, “ Whether the said *E. Power*, and all and every
 “ other person or persons whose estate he had in a certain
 “ parcel of land called *Barber's Land*, containing, by estima-
 “ tion, twenty-three acres of land, parcel of a certain farm or
 “ tenement and lands lately occupied by the said *E. Power*,
 “ situate, lying, and being within the said parish of *Barwell*,
 “ containing in the whole, by estimation, one hundred and
 “ sixty-three acres, have and hath, from time whereof the
 “ memory of man is not to the contrary, been accustomed to
 “ pay, and have and hath paid, in every year, to the rector of
 “ the said rectory or parish of *Barwell* for the time being,
 “ or his farmer or his appointee, by half-yearly payments, on

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“ the feast-days of *the Annunciation of the Blessed Virgin Mary*
 “ and *Saint Michael the Archangel*, or at such time or times after
 “ the said feast-days as required the sum of one pound, ten
 “ shillings, for and in respect of that part of the said farm and
 “ lands called *Barber's Land*, in full satisfaction and discharge of
 “ the tithes of all and singular the titheable matters arising,
 “ renewing, increasing, and growing in and upon the said farm
 “ and lands called *Barber's Land*.”

In which said first, second, and third issues, the executrix of the said *Power* is to be the plaintiff at law, and the plaintiff in equity the defendant.

FOURTHLY, “ Whether the owners and proprietors or occupiers of a certain ancient farm or one entire estate late
 “ *Gisburne's Estate*, containing four hundred and twenty-five
 “ acres, thirty-three poles, situate, lying, and being in the said
 “ parish of *Barwell*, from time whereof the memory of man is
 “ not to the contrary, have used and been accustomed to pay,
 “ and have paid, in every year, to the rector of the said rectory
 “ or parson of the parish-church of *Barwell* aforesaid, for the
 “ time being, his farmer or appointee thereof, by half-yearly
 “ payments, on the feast-days of *the Annunciation of the Blessed*
 “ *Virgin Mary* and *Saint Michael the Archangel*, or as soon after
 “ as demanded, the sum of twenty pounds, in lieu and full
 “ satisfaction of all and singular tithes whatsoever yearly arising,
 “ growing, renewing, or happening in and upon the said ancient
 “ farm or one entire estate called *Gisburne's*.”

The defendants *W. Leader*, *Richard Ileech*, and *J. Toon* are to be the plaintiffs at law in this issue, and the plaintiff in equity the defendant.

FIFTHLY, “ Whether the owners and proprietors or occupiers of a certain ancient farm or one entire estate, called
 “ *Noel's Estate*, containing three hundred and twenty-nine
 “ acres, fourteen poles, situate, lying, and being within the said
 “ parish of *Barwell*, from time whereof the memory of man is
 “ not to the contrary, have been accustomed to pay, and have
 “ paid, in every year, to the rector of the said rectory or parish-
 “ church of *Barwell* aforesaid for the time being, or his farmer
 “ or appointee thereof, by half-yearly payments, on the feast-
 “ days of *the Annunciation of the Blessed Virgin Mary* and *Saint*
 “ *Michael the Archangel*, or as soon after as demanded, the sum
 “ of thirteen pounds, in lieu and full satisfaction of all tithes
 “ yearly growing, arising, renewing, or happening in and upon
 “ the said ancient farm or one entire estate called *Noel's*.”

In which said fifth issue, the defendants *J. Gamble* and *J. Toon* are to be plaintiffs at law, and the plaintiff in equity defendant.

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against
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SIXTHLY, "Whether the owners and proprietors of a certain
"entire estate, containing, by estimation, two hundred and
"forty-eight acres, situate, lying, and being within the said
"parish of *Barwell*, and of which said entire estate *Anthony*
" *Oneby, Esq.* heretofore was, and *John Ailway, Esq.* now is,
"the owner, have and hath, from time whereof the memory of
"man is not to the contrary, been accustomed to pay, and have
"and hath paid, in every year, to the rector of the said rectory
"or parish of *Barwell* for the time being, or his farmer or
"appointee, by half-yearly payments, on the feast-days of
"the *Annunciation of the Blessed Virgin Mary* and *Saint Michael*
"the *Archangel*, or at such times after the said feast-days as
"required, the sum of eight pounds, six shillings, in lieu and
"full satisfaction and discharge of the tithes of all and
"singular the titheable matters arising, increasing, renewing,
"and growing in and upon the said entire estate."

The defendant *J. Toon* is to be the plaintiff at law, and the plaintiff in equity the defendant.

THE COURT further ordered *G. Allen, E. Darker, S. Smith,* and *E. Smith*, to account for the tithes which had arisen upon the lands in their respective occupations, as demanded by the bill; and *J. Toon* to account for the tithes which had arisen upon the lands in his occupation parcel of the said entire estate called *the Old Farm*; the defendants *G. Allen, E. Darker, S. Smith, E. Smith,* and *J. Toon*, to pay the plaintiff her costs.

The fourth issue was tried by a special jury; and a verdict was found for the defendant in the said issue.

The plaintiffs in the said first, second, third, fifth, and sixth issues, declined to try the same; and the cause was set down for further directions; and on the twentieth of *February 1783*, it came on accordingly; when upon reading the decree, report, and *postea*; and hearing counsel;

THE COURT ordered the report to be confirmed; the defendant *G. Allen* and others to pay the forty-two pounds, eight shillings, and sixpence reported due, and also one hundred and six pounds, ten shillings, and three halfpence, being the said defendants' proportion of the plaintiff's costs of this suit to the hearing of this cause already taxed.

THE COURT further ordered the defendant *A. Power* and others to account for the tithes which had arisen upon the several lands in their respective occupation, as demanded by the said bill; that the defendant *J. Toon* do also account for the tithes of the farm called *Ailway's Farm*, and the several lands in his occupation, parcel of the said respective farms, called *Gisburne's Farm* and *Noel's Estate*, and pay the same, and also eighty-five pounds, four shillings, and one penny halfpenny, being the
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amount of the remaining four nine parts of the said plaintiff's costs of this suit to the hearing already taxed as aforesaid.

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against
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THE COURT further ordered *William Leader* and others to pay to the plaintiff her costs at law on the trial of the fourth issue.

THE COURT also ordered the several defendants to pay to the plaintiff subsequent costs of this suit; the deputy remembrancer to tax the said costs, and to take the said accounts.

SKYNNER, *Chief Baron.*
EYRE, *Baron.*
HOTHAM, *Baron.*
PERRY, *Baron.*

TRAVIS *against* CHALONER.

TRIN. TERM,
21. GEO. 3.

Cheshire, 21st June 1781.

THE vicar of *East Ham* (a), in the county of *Chester*, claimed the tithe of hay in the townships of *Great Sutton* and *Little Sutton*, in kind.

The vicar of *East Ham*, in *Cheshire*, is entitled to the tithes of hay arising in the townships of *Great Sutton* and *Little Sutton* in kind.

The defendants denied, that the vicar was endowed with the tithe of hay in the said townships, or either of them; and said, that the said townships, with the rectory impropriate, were part of the possessions, and in the hands of the *abbot of Chester*, at the dissolution of the greater monasteries in the time of *Henry the Eighth*; that *Henry the Eighth* was entitled to all the tithe of hay and grass mowed for hay in the said townships in right of the said impropriate rectory; that the said townships (exclusive of *the Old Hall* reputed to have been an ancient religious house belonging to the said abbey and *the Demesne Lands* thereto belonging in the township of *Little Sutton*, and exclusive of a modern farm inclosed from the common lands within the manor of *Little Sutton*, no part of which was occupied by the defendants) had, for time immemorial, consisted of several ancient and distinct farms, of all which the particular lands thereto severally belonging were still separately and well known; that they had during their several holdings taken all the hay and hay grass arising from the said ancient farms to their own use, without setting out the tithe thereof to the plaintiff; that until the plaintiff should establish a right at law to the said tithe of hay arising from the said farms, they were not compellable to set forth the same; that the said ancient farms, which they set forth, were, as they believed, part of the impropriate rectory of

(a) See *Travis v. Gill*, vol. 3. page 523.; and *Travis v. Stanley*, ante, 372.; *Travis v. Mason*, vol. 3. page 531.; *Travis v. Oxton*, vol. 3. page 81.

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East Ham, formerly called the *rectory of Sutton*; that no satisfaction had been, at any time, made to any vicar of the parish for or in respect of the tithe of hay or grafs mowed for hay arising from any of the said ancient farms; and that the said tithes belonged to the owners of the said ancient farms.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and the cause came on to be heard on the twenty-first of *May* last and several days following; when upon hearing counsel on both sides, the said bill was read as to the manner of the plaintiff laying his claim of tithes; and the following written evidence, after the reading of it had been objected to by the defendants counsel and the objection overruled, was read; the rental of the abbot of *Saint Werburgh*, in *Chester*, of the tenth year of *Henry the Sixth*; *East Ham terrier*, 1696; a copy, *East Ham terrier*, the twenty-fourth of *May* 1709; and reading the depositions of several witnesses for the plaintiff; a copy of an act of parliament for vesting the estates of *C. Cholmondeley* in trustees for sale, passed in the sixth year of *George the Second*; the record of *A POSTEA* returned into the office of pleas of this court, in a cause in 1779, *Travis, Clerk, v. Mason (a)*; and on the deposition of *W. Mason*, examined for the plaintiff, being offered, but the reading refused by the Court; and reading several decrees of this court in the said cause, *Travis v. Whitehead (b)*, dated respectively the eighteenth of *December* 1775, the first of *July* 1777, and the twenty-fifth of *November* 1779, the reading of which was also objected to by the defendant's counsel, but the objection overruled; and reading, for the defendants, several depositions; and the depositions of *J. Gill* and *S. Watbew* were also offered to be read, but objected to by the plaintiff's counsel as persons interested in the event of this suit, and the said *J. Gill's* deposition was rejected, but the said *S. Watbew's* admitted to be read; and the depositions of several other witnesses on their behalf were offered to be read, and objected to by the plaintiff's counsel, but *W. Ellis*, *T. Newport*, *T. Jones*, *P. Pearson*, and *J. Wright's* depositions were admitted by the court, and *W. Hall*, *T. Whittle*, and *J. Burrows* were rejected; and on reading an order to prove exhibits, viz. copy of a grant from *THE ROLLS*, made in the thirty third year of the reign of *Henry the Eighth* to the dean and chapter of *Chester*; copy of a licence to *Sir R. Cotton* to alienate to *Sir Hugh Cholmondeley*, dated the fourteenth of *May*, in the seventh year of *King Edward the Sixth*; conveyance from *G. Cotton* to *Sir H. Cholmondeley*, dated the second of *November*, in the seventh year of *Queen Elizabeth*; grant, made the fourteenth day of *December*, in the twenty-second year of the said queen, to *C. Cotton* and *Cholmondeley*; conveyance, dated the twentieth of *September*,

(a) See vol. 3. page 531.

(b) See vol. 3. page 527.

in the eighth year of *King James the First*, from *H. Manwaring* (a trustee) to *R. Cholmondeley*; mortgage from *E. Cholmondeley* to *Dame E. Chicheley*, dated the twenty-ninth of *September 1694*; assignment of the said mortgage to *F. Cholmondeley*, dated the twentieth of *November 1705*; assignment thereof to *J. Hunt*, dated the fourth of *October 1709*; assignment of the said *J. Hunt* to *Asbeton*, dated the twenty-third of *January 1716*; mortgage to *Knight*, dated the twenty-first and twenty-second of *February 1708*; indorsement on the said indenture, dated the twenty-third of *May 1724*; release, by way of mortgage, from *Knight* and *Cholmondeley* to *Harvey* and *Tydy*, dated the second of *May 1721*; lease and release from *Harvey* and *Tydy* to *C. Cholmondeley*, dated the sixteenth and seventeenth of *May 1724*; a table of the tithes of *East Ham*, as received by *W. Seddon* and *George Becket*, late vicars of the said parish; the parliamentary survey 1649, from *Lambeth Library*, folios 212, 224, and 225; and a receipt to *John Hignett*, *Easter 1771*, signed by the plaintiff; and upon reading an order made in this cause the seventh of *November* last, for amending the said bill; and the defendants counsel offering to read in evidence on their behalf *posseas* on issues directed by this court in a cause wherein the said *G. Travis* was plaintiff, and *Sir W. Stanley, Baronet*, defendant, the same was objected to by the plaintiff's counsel, but the said objection being over-ruled by the court the said *posseas* were read; and the depositions of *G. Walker* and *J. Chritchley* were also read on the plaintiff's behalf, in reply to the defendants evidence; and hearing the plaintiff's counsel in reply;

TRAVIS
against
CHALONER.

THE COURT ordered the defendants to account for the tithes in kind of hay demanded by the bill, with costs.

SKYNNER, *Chief Baron.*
EYRE, *Baron.*
HOTHAM, *Baron.*
PERRY, *Baron.*

FULL against HUTCHINS.

Devonshire, 5th December 1781.

MICH. TERM,
22. GEO. 3.

THE plaintiffs, as landholders in the parish of *Dittisham*, in the county of *Devon*, insisted, that the rector was only entitled to one penny, called *an egg penny*, at *Easter*, as a *modus* in lieu of the tithes of all eggs, geese, ducks, and other fowls; to one penny, in lieu of tithes in kind of all herbs, roots, and garden stuff, used and consumed in the family; to another penny, called *an hearth penny*, as a *modus*, in lieu of tithes in kind of all wood, furze, and other fuel, consumed in the family; and that shortly after he had been instituted, he had agreed to accept two shillings in the pound, according to the then

The rector of *Dittisham*, in *Devonshire*, is entitled to his tithes in kind.

See ante, 155.

FULL
against
HUTCHINGS,

then stipulated value of their estates, in lieu of all tithes in kind, as well great as small, to commence from *Michaelmas* 1768 to *Michaelmas* 1769, and so continue from year to year until the defendant and the plaintiffs should think proper to vacate the same, first giving a reasonable legal notice for so doing; that they had respectively paid the same to the twenty-fifth of *March* 1774; but that between that day and the *Michaelmas* following, he had informed them that the said composition was to be at an end; but they insisted, that such composition could not be vacated till *Michaelmas* 1774; and that they had tendered to him their remaining half-year's composition to that day, which he had refused to accept.

The defendant denied the existence of the *modus*, or that he had made any such agreement; but said, that soon after his institution, finding his predecessor had for some time before received the said composition, he did in like manner receive the same half-yearly to the twenty-fifth of *March* 1771; that afterwards they agreed to deliver him two bushels of wheat yearly, at *Lady Day*, for every fifty pounds a-year such farms were rated at over and above the said composition, and which he accepted accordingly to *Lady Day* 1774; and that soon after the fourteenth day of *October* 1773, about which time he received the half-yearly payment of the last-mentioned composition, which became due at *Michaelmas* 1773, he gave notice in writing to the plaintiffs, that he should expect they would set out and deliver their tithes in kind from the twenty-fifth day of *March* then next following; that at the time of delivering such notice, he informed them, that he would, by way of composition, receive four shillings an acre for the tithes of all sorts of corn and grain, one shilling and sixpence an acre for the tithes of all grass cut or mowed for hay, and one shilling in the pound according to the sums their respective estates were rented at or rated to the poor, in lieu of all small tithes, pigs, geese, and honey excepted; but that the plaintiffs had refused to comply therewith, or to set out their tithes in kind.

The plaintiffs replied; the defendant rejoined; and witnesses were examined on behalf of the plaintiffs; and upon hearing counsel on both sides; and upon reading the proofs taken in the cause; and on debate of the matter;

THE COURT ordered the bill to be dismissed with costs.

DIBBEN

DIBBEN *against* FIFETT.HILARY TERM
22. GEO. 3.*Dorsetshire, 24th January 1782.*

THE rectory of *Fontmell Magna*, with the chapelries of *Hartgrove* and *Bedcester* and *West Orchard*, in the county of *Dorset*, thereunto annexed, claimed all tithes, both great and small, in kind, yearly arising therein.

The rector of *Fontmell Magna*, with the chapelries of *Hartgrove*, *Bedcester*, and *West Orchard*, in *Dorsetshire*, annexed, is entitled to the great and small tithes of the farms called *Fifett's Living* and *Hartwell's*, in kind.

The defendant *J. Fifett* said, that he had been occupier of an ancient farm, called *Fifett's Living* and *Orchard Lands*, situate in the chapelry of *Hartgrove*, in the said parish; that he had had thereon the several titheable matters named in the answer; but that he had not had any hay, clover, wool, colts, or lambs thereon; that he occupied another estate in the parish of *East Orchard*, called *Collins's Farm*, whereon he kept and agisted sheep from *Michaelmas* to *Lady Day* yearly; that he had occasionally removed the said sheep from *Hartgrove* to *East Orchard*, and back again, as often as he found it necessary; and he denied, that the plaintiff was entitled to any tithes in kind for his farm in *Hartgrove*; but insisted, that the *modus* hereinafter mentioned was payable in lieu thereof.

The defendant *R. Jefferys* also set up the hereinafter mentioned *modus* for his farm called *Hartwell*, situate within the chapelry of *West Orchard*, in the said parish.

THE COURT accordingly ordered issues to try the *moduses*; the defendants in equity to be plaintiffs in the action, &c

The issues were accordingly tried by a *special jury*; and they found,

As to THE FIRST ISSUE, "That there is not, and hath not
" been, from time whereof the memory of man is not to the
" contrary, an ancient or laudable custom within the parish of
" *Fontmell Magna* and chapelry of *Hartgrove*, that the owner
" or occupier of the ancient farm called *Fifett's Living*, in
" *Hartgrove* aforesaid, in the said parish of *Fontmell Magna*, in
" his, the said *John Fifett's*, occupation, hath paid immemo-
" rially, or ought to pay, to the rector of the said parish for
" the time being, or his lessee, half-yearly, by two equal pay-
" ments, on *Whit Monday* and *All Saints* yearly, or so soon after
" as the same should be demanded, the sum of one pound, one
" shilling, as a *modus*, in lieu and satisfaction of all tithes and dues
" whatsoever arising and renewing from and upon the said
" ancient farm and lands in the said *John Fifett's* occupation
" within the said parish and chapelry; and that the same hath
" not been immemorially paid, accepted, received, or taken by
" the rector of the said parish and chapelry for the time being,
" or his lessee, in lieu of all such tithes down to the time when
" the said *Richard Dibben* became rector of the said parish, as
" he,

DIBBEN
against
FIFETT.

“ he, the said *Richard Dibben*, hath in pleading in that behalf
“ alledged.”

As to THE OTHER ISSUE, “ That there is not, and hath not
“ been, from time whereof the memory of man is not to the
“ contrary, an ancient and laudable custom within the chapelry
“ of *West Orchard* and parish, of *Fontmell Magna* aforesaid, that
“ the owner or occupier of the ancient farm called *Hartwells*,
“ late in the said *Richard Jefferys* occupation, and then in
“ the occupation of *John Jefferys*, hath immemorially paid, or
“ ought to pay, to the rector of the said parish for the time
“ being, or his lessee, half-yearly, by two equal payments, at
“ *Michaelmas* and *Lady Day* yearly, or so soon after as the
“ same should be demanded, the sum of one pound, thirteen
“ shillings, and fourpence, as a *modus*, in lieu of all tithes
“ and dues whatsoever yearly arising and renewing from
“ and upon the said ancient farm and lands in the said *John*
“ *Jefferys* occupation within the last-mentioned chapelry and
“ parish aforesaid; and that the same hath not been immemo-
“ rially paid to and received or taken by the rector of the said
“ parish and chapelry for the time being, or his lessee, in lieu of
“ all tithes on the said *John Jefferys*’s said farm and lands down
“ to the time when the said *Richard Dibben* became rector of the
“ said parish, as he, the said *Richard*, hath in pleading in that
“ behalf alledged.”

Upon reading the decree and *postea*; and hearing counsel;
and on debate of the matter;

THE COURT, on the fifth of *February* 1784, ordered the
deputy to take an account of what was due from *John Fifett* and
Mary Jefferys, as administrator of her late husband, for all and
singular the titheable matters and things as demanded by the
bill; and that the said defendants do forthwith pay to the
plaintiff his costs both at law and in this court: the confi-
deration of subsequent costs to be reserved till after the
report.

HILARY TERM
22. GEO. 3.

BOULTER against GRIFFITHS.

Worcestershire, 7th *February* 1782.

The vicar of *Eckington*, in *Worcestershire*, is only entitled to 2d. a milch cow, in lieu of the tithes of milk, and to 4d. a colt in lieu of the tithes of colts foaled by mares in the parish.

THE plaintiffs, as owners and occupiers of lands and tene-
ments in the parish of *Eckington*, in the county of *Wor-*
cester, filed their bill, stating, that in lieu of the tithes in kind of
milk there had been paid to the vicar, at *Easter* yearly, or as
soon after as demanded, the sum of twopence for every milch
cow depastured and milked in the said parish; and in lieu of
the tithes in kind of colts, at *Easter* yearly, or as soon after as
demanded, the sum of fourpence for every colt foaled by mares
kept

kept in the parish; that the vicar had combined with the impropriator and patron to destroy the said *modus*; that the vicar had instituted suits against them in the ecclesiastical court of *the Bishop of Worcester* to recover tithes in kind of milk and colts, and had prevailed upon several of the inhabitants thereof to submit to his demands; and therefore they prayed, &c.

BOULTER
against
GRIFFITHS.

The defendant *Griffiths* denied the *modus*; and insisted, that all vicarial tithes were due to him in kind.

The dean and chapter of *Saint Peter*, in *Westminster*, said, that they were the impropriate rectors of the parish, and patrons of the vicarage; that the other defendant was the vicar thereof; that they knew not whether there were any such *modus* existing; but that they had been informed, that no such *modus* did exist; that they were trustees for the church of *Westminster*; and hoped the Court would take care of and protect the rights and interest of the church.

The defendant *Griffiths* declined to try at law the validity of the *modus*.

THE COURT therefore ordered the said several *modus* to be for ever established against the said *G. Griffiths*, the present vicar, and his successors; and also as against the dean and chapter of the collegiate church of *Saint Peter, Westminster*, the impropriate rectors of the said parish, and the now patrons of the said vicarage; and also against all future patrons thereof, and every of them; that the injunction already granted until the hearing of this cause for restraining the said defendant *G. Griffiths* from proceeding in the ecclesiastical court of *the Bishop of Worcester*, for recovery of tithes in kind of the titheable matters covered by the said *modus* be made perpetual; that the plaintiff do pay to the dean and chapter their costs; but as between the plaintiffs and *G. Griffiths*, that there be no costs paid on either side.

J. SKYNNER.
JA. EYRE.
B. HOTHAM.

SYNDERCOMBE against HOW.

Dorsetshire, 11th February 1782.

HILARY TERM
22. GEO. 3.

THE plaintiff, as lessee of the rector of *Symondsbury*, in the county of *Dorset*, claimed all manner of tithes, oblations, obventions, and profits arising on *Lower Vearse*, otherwise *Lower Verst Farm*, with divers closes, pieces, and parcels of arable, meadow, and pasture land, in the occupation of the defendant from the twenty-fifth of *March* 1781.

The rector of *Symondsbury*, in *Dorsetshire*, is only entitled to 8d. a milch cow, and 6d. a milch heifer, in lieu of the tithes of the

milk and calves of such cow and heifer.

The

SYNDERCOMBE
against
How.

The defendant admitted, that the plaintiff was lessee, and entitled to all tithes and profits arising in the parish, except to the tithe of milk and calves; and set up a *modus* of eightpence a milch cow, in lieu of tithes of milk and calves of every such cow; and sixpence for every milch heifer, in lieu of the tithes of milk and calves for every such heifer; and insisted on the said several *moduses* in bar to the demand of such tithes.

THE COURT directed the following issues to try,

FIRST, "Whether, for time whereof the memory of man is not to the contrary, there hath been an ancient custom within the said parish of *Symondsbury*, and the titheable places thereof, for the occupiers of all lands within the said parish to pay to the rector thereof, his farmer, lessee, or proctor for the time being, yearly and every year, a *modus* or customary payment of eightpence for the tithes of the milk and calves of each milch cow fed or depastured within the said parish and the titheable places thereof, in lieu and satisfaction of the tithes of the milk and calves of such cow."

SECONDLY, "Whether, for time whereof the memory of man is not to the contrary, there hath been an ancient custom within the said parish of *Symondsbury*, and the titheable places thereof, for the occupiers of all lands within the said parish, to pay to the rector thereof, his farmer, lessee, or proctor for the time being, yearly and every year, a *modus* or customary payment of sixpence for the tithe of the milk and calves of each heifer fed or depastured within the said parish and the titheable places thereof, in lieu and satisfaction of the tithes of the milk and calves of such heifer."

The said trial was had, and a verdict given therein for the defendant.

THE COURT, upon reading the *posse*, ordered the bill to be dismissed without costs.

J. SKYNNER.
JA. EYRE.
B. HOTHAM.
R. PERRY.

EASTER TERM
22. GEO. 3.

COOPER against KELLAWAY.

Dorsetshire, 8th April 1782.

The vicar of *Yatminster*, with the chapelries of *Leigh* and *Cbetnole*, in *Dorsetshire*, annexed, is only entitled to 2d. a cow and 1½d. a heifer, in lieu of the tithes of milk and calves of such cow and heifer.

THE vicar of *Yatminster*, in the peculiar jurisdiction of the dean of *Sarum*, with the chapelries of *Leigh* and *Cbetnole*, in the county of *Dorset*, thereto belonging, claimed all small tithes and vicarial dues yearly arising therein; and stated,

that

that the defendant *Kellaway* was in the occupation of *Carfwell Farm*, in the said parish, from which he had cut, plucked, taken, and gathered, from the thirteenth of *February* 1778, corn, grain, hay, furze, wood, underwood, and divers other titheable matters and things; that the defendants *Stone* and *Elford* were in possession of divers farms and lands within the chapelries of *Leigh* and *Chetnole*, from all which they had, from the same time, collected and gathered clover and other grass seeds, and had bred, weaned, and kept divers young cattle, which, before they became profitable, had been, for a long time, used for the plough or pail; that they had fed, agisted, and depastured barren and unprofitable cattle, and had kept divers milch cows, from which they had calves and milk; that they also had many mares, sheep, and sows, which produced foals, lambs, wool, and pigs; that they had cut and gathered hemp and flax; that they also had kept geese, hens, ducks, and other poultry, from which they had eggs; that they had plucked and gathered apples, fruits, garden stuff, and divers other small titheable matters and things, for which they had refused to make him any compensation. The bill therefore prayed an account and payment.

COOPER
against
KELLAWAY.

The defendants admitted, that *Kellaway* was occupier of *Carfwell Farm*, and also of *Winterhage Farm*, part whereof lay in the parish of *Stockwood* and part in *Yatminster*; that *Stone* occupied *Witbyhook Farm*, in the chapelry of *Leigh*; that *Elford* occupied *Chubb's Farm*, part whereof lay in the parish of *Stockwood*, and the other part in the chapelry of *Chetnole*, and also several other estates in the said parish; that they respectively, since the thirteenth of *February* 1761, had kept thereon the several titheable matters in the bill mentioned; but they insisted, that there had been immemorially payable by each and every occupier of lands within the parish of *Yatminster* and the chapelries of *Leigh* and *Chetnole* having cows and heifers, or either of them, the several *modus*es following, to wit, the yearly sum of twopence for each cow, and the yearly sum of three halfpence for each heifer kept, depastured, and milked within the said parish and chapelries, in lieu and satisfaction of all the tithes of calves and milk of such cows and heifers respectively; and that the said sums were payable on *Candlemas Day* in each year, computing by the old stile, or as soon after as demanded. They further insisted, that the occupiers of lands in the parish and chapelries had, for a great length of time, been accustomed to pay to the vicar certain yearly *compositions* in lieu of their small tithes, except the tithes of calves and milk, as follows, to wit, the yearly sum of one penny for every four pounds for the yearly value of their estates and lands within the parish; one penny for every three pounds within the chapelry of *Leigh*; and one penny for every five pounds

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against
KELLAWAY.

within the chapelry of *Chetnole*; that the said yearly values were estimated according to the yearly sums at which such estates and lands were rated to the poor within the said parish and chapelries respectively, and which compositions had been paid for several years past for the vicarial or small tithes, except as aforesaid, of calves and milk; and that the payment of the said *modus*es had ever since continued, except as to *Carfwell Farm* and the tithes of apples, which had been paid or compounded for separately.

The defendant *Kellaway* said, that for a great length of time a composition or sum of five pounds *per annum*, at *Candlemas Day* old stile in each year, had been paid by the occupier of *Carfwell Farm* to the vicar of the said parish for the time being, for and in lieu and full satisfaction of all the great and small tithes arising upon the said farm, including the said *modus* of twopence and three halfpence for cows and heifers; and that the same had been regularly paid by him up to *Candlemas Day* 1778, old stile.

All the defendants said, that they had paid the several compositions payable by them pursuant to the said agreement up to the same time, as also all their tithes of apples; and that the vicar having accepted the said *compositions* ought still to accept the same; and that therefore he was not entitled to any account.

THE COURT ordered the deputy to take an account of what was due for the small tithes, except the tithes of milk demanded by the bill, which had arisen since the thirteenth day of *February* 1778.

THE COURT further ordered an issue to try, "WHETHER, " from time whereof the memory of man is not to the contrary, " there hath been, and now is, accustomed to be paid and " payable, at *Lammas Day* yearly old stile, or so soon after as " demanded, by all the occupiers of lands within the parish of " *Yatminster* and chapelries of *Leigh* and *Chetnole*, keeping and " depasturing cows and heifers, or either of them, within the " said parish and chapelries, yielding milk, to the vicar of the " said parish for the time being, or his lessee or farmer, the " several customary payments or sums of money following, TO " wit, the yearly sum of twopence for each cow, and the yearly " sum of three halfpence for each heifer by them severally kept " and depastured within the said parish and chapelries, for and " in lieu and full satisfaction of all tithes in kind of milk arising " from such cows and heifers respectively." The defendants in equity to be the plaintiffs at law; the judge to indorse the

posse

posita as to any special matter that may arise on the trial; and the consideration of costs as to the issue and the account, and all further directions, to be reserved until after such trial.

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against
KELLAWAY.

The vicar refused to try the issue; and agreed, that the same should be taken *as confessed* by him in like manner as if the same had been tried and a verdict found thereon for the defendants in equity.

THE COURT, on the sixteenth of May 1782, accordingly ordered the said issue to be taken *as confessed*, and the said *moduses* to be established (a).

(a) On the fifth of December 1689, Michaelmas Term, 1. Will. & Mary, the cause of *Minterne and Others v. White* came before the court of exchequer. The plaintiffs were landholders in the parish of *Tatminster* and in the chapelries of *Leigh* and *Cbetnole*. The defendant was the vicar of the said parish, with the said chapelries annexed. The object of the bill was, to settle the customs and modes of paying tithes and other dues to the vicar. The vicar appeared and answered the bill; and witnesses were examined on both sides;

and it appeared upon the depositions, that the manner of paying the said tithes was as stated in the bill; and upon reading an ancient terrier stated in the answer, the plaintiffs offered to try the said modes of tithing in an action at law; but the vicar declined it, and proposed, that it might be referred to some neighbouring gentlemen to settle the matter between them. To which proposal the plaintiffs assented; and it was, by an order of court, referred accordingly.

BLAKISTON against KIRSTEMAN.

EASTER TERM
22. GEO. 3.

Essex, 30th April 1782.

THE vicar of *Canevedon*, in the county of *Essex*, claimed all the tithes payable in the said parish, except only the tithes of corn, and particularly the tithes of *cole seed*, which had arisen on two closes of land called *Bridge Field* and *the Twenty Acres*, part of *Norpit's Farm*, in the occupation of the defendant in the year 1780.

The vicar of *Canevedon*, in *Essex*, is entitled to the tithes of *cole seed*.

The defendant admitted that the plaintiff was vicar, and intitled to all tithes of *cole seed*, and all other tithes, except the tithes of corn; save as far as he was bound by an agreement for a composition, and such other agreements as he had entered into for taking compositions in lieu of tithes. He admitted, that for several years past he had been occupier of the said closes; that in 1779 he had sowed them with *cole seed*; that before *Michaelmas* in the following year he had reaped and gathered the same; that he had for several years before 1780 paid the plaintiff by agreement one shilling and sixpence in the pound of the yearly value of his farm, from *Michaelmas* to *Michaelmas*, by equal half-yearly payments, as a composition in lieu of all vicarial tithes whatsoever; that he, the plaintiff, had not, before the year 1780, given him any notice to determine his said composition: and therefore he insisted that the same continued good for the year from

A notice given in one year to determine a composition ending at *Michaelmas* in the preceding year, is good.

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against
KIRSTEMAN.

Michaelmas 1779 to *Michaelmas* 1780, and he denied that it had been usual for the occupiers to pay the vicars the tithes of cole seed, over and above the said composition, but that it was in satisfaction of all vicarial tithes, as well of cole seed as of other titheable matters. He further said, that about *Michaelmas* 1780, he received a notice in writing from the plaintiff's agent, that he should from *Lady day* then next take the tithes in kind; and he admitted that he had not paid any attention to said notice, having always paid the said composition from *Michaelmas* to *Michaelmas*, and the said notice requiring it to be determined at *Lady Day*. He further said, that neither the plaintiff, or any person for him, had, at any time before *Michaelmas Day* 1779, given him any notice whatsoever to determine the said composition, or that he would receive the tithes in kind of cole seed raised by him in 1780; and that he had not received any notice, except as aforesaid.

THE COURT ordered the deputy remembrancer to take an account of what was due to the plaintiff for the tithes demanded by the bill.

SKINNER, Chief Baron.
EYRE, Baron.
HOTHAM, Baron.
PERRY, Baron.

TRIN. TERM,
22. GEO. 3.

WILLIS against FOWLER.

Buckinghamshire, 3d June 1782.

The occupiers of the Eleven Acres belonging to St. Martin's Chapel, of Tenner's Close, and Miller's Meadow, only pay 4d a yard land to the rector of Bletchley, in Buckinghamshire, in lieu of all tithe hay arising in the hamlet of Water Eaton, in the said parish. See other causes, Mich. Term, 26. Geo. 3.; and Trin. Term, 31. Geo. 3.

THE rector of *Bletchley*, in the county of *Bucks*, claimed the tithes of hay, and all other tithes, both great and small, arising in the parish; and stated, that there was a hamlet within the parish called *Water Eaton*; that the defendants, in the year 1780, had severally occupied certain farms adjoining thereto; and that they had had in that year a quantity of grass, which they had mowed, made into hay, and carried away, without setting out the tithes thereof. The bill therefore prayed an account of and satisfaction for the same.

The defendants admitted, that there was within the parish a hamlet called *Water Eaton*; and said, that anciently there was a highway leading from *London* northwards, which entered a piece of waste land belonging to the said hamlet, into and through certain pasture grounds, called *Saffron Gardens*, the *Manor*, and the *Busby Close*, belonging to the hamlet of *Fenny Stratford*; in the said parish of *Bletchley*, towards or on the western

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against
FOWLER.

western side of the said hamlet of *Water Eaton*; that *Water Eaton* lay principally on the eastern side of the road, though there was not any such road then, the present highway running through the hamlet of *Fenny Stratford*, between the parishes of *Bletchley* and *Simpson*. They also admitted, that they occupied, in 1780, certain farms in *Water Eaton*; and, setting forth the quantities and values thereof, and of the grafs which they had mowed into hay, insisted, that all the farms occupied by them lay in that part of the hamlet of *Water Eaton* which was on the eastern side of the said ancient road leading from *London* northwards; that there were divers other farms and lands lying in that part of the said hamlet; and that there was payable yearly, at the *feast of Saint Thomas* in each year (computing by the old stile), or so soon after as demanded, to the rector of the said rectory and parish-church of *Bletchley* for the time being, by all and every the occupiers of lands lying and being within that part of the said hamlet of *Water Eaton* which lay on the eastern side of the said ancient road from *London* northwards (except the occupiers of the lands following in respect of such lands, viz. a place called *Eleven Lands*, containing five acres of arable, formerly *Cosby's*, belonging to a farm in the said parish of *Bletchley* which had been lately purchased by *B. Willis*, deceased, and had been by him given to or for the use of the chapel of *Saint Martin* in *Fenny Stratford*; a piece of land called *Messman's*, containing twenty perches, or thereabouts; a close of inclosed meadow, containing two acres, formerly called *Eleanor's Wells*; a piece of meadow land called *Miller's Meadow*, containing seven acres; and a piece of arable land called *Tenter's Close*, containing sixteen acres), a certain ancient *modus* or customary payment of fourpence a yard land, each yard land containing, by computation, thirty acres of land, and so in proportion for a greater or less quantity than a yard land; the yard land being computed upon and comprising all the lands, as well arable and pasture and homesteads as meadow lands lying on the said eastern side of the said hamlet of *Water Eaton*, in the occupation of the said occupiers respectively (except as before excepted), and so in proportion for a greater or less quantity than a yard land, for and in lieu and full satisfaction and discharge of all the tithes in kind of hay yearly arising, growing, renewing, and increasing, and had and taken by the several and respective occupiers of the said farms and lands on the said eastern side of the said hamlet of *Water Eaton*, upon and from their several and respective lands, or any parts or part thereof (except as to the lands herein-before excepted); and that such *modus* had been paid to the plaintiff, from his induction into the said rectory to *Saint Thomas's Day* 1777 inclusively; that they had always been willing, and should have continued to pay him the said *modus*;

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against
FOWLER.

but that he, on the twenty-fifth of *March* 1778, gave them notice severally, that he should demand the tithes of hay in kind of all their lands lying in the said hamlet of *Water Eaton*; and that since such notice, he had refused to accept of the said *modus*.

The plaintiff replied; and witnesses were examined on the part of the defendants only; and upon hearing counsel;

THE COURT, by consent, ordered the *joint answer* of the defendants to be immediately amended without oath, by adding the following words: "And so in proportion for a greater or less quantity than a yard land."

An issue was directed to try the *modus* as laid in the said amended answer; the defendants to be the plaintiffs at law; to be tried by a special jury; the judge to indorse any special matters; and further directions to be reserved, &c.

The issue was tried; and the jury found, "That there had not been the said *modus* payable as before stated; but that, from time whereof the memory of man is not to the contrary, there hath been, and now is, payable yearly, at the *feast of Saint Thomas* in each year, computing by the old stile, or so soon afterwards as demanded, to the rector of the said rectory and parish-church of *Bletschley* for the time being, by all and every the occupiers of the lands following in respect of such lands, TO WIT, a place called *Eleven Acres*, containing five acres of arable, formerly *Cosby's*, belonging to a farm in the said parish of *Bletschley*, which had been then lately purchased by *Brown Willis, Esquire*, deceased, and had been by him given to or for the use of the chapel of *Saint Martin in Fenny Stratford*; a piece of land called *Mossman's*, containing twenty-four perches, or thereabouts; a piece of meadow land called *Miller's Meadow*, containing seven acres; and a piece of arable land called *Tenter's Close*, containing sixteen acres; a certain ancient *modus* or customary payment of fourpence for every yard land by them respectively occupied, each yard land consisting of thirty acres, and so in proportion for any lesser quantity than a yard land within the said hamlet of *Water Eaton*, for and in lieu and full satisfaction of all tithes of hay arising, renewing, and increasing, upon all and every the meadows, meadow lands, and homesteads, within the said hamlet of *Water Eaton* and the ancient baulks and pieces of meadow lands situate, lying, and being within the common fields of the said hamlet of *Water Eaton* (except as before excepted)."

THE

THE COURT, on reading the decree and *poslea*, ordered the bill to be dismissed, but without costs (a).

WILLIS
against
FOWLER.

EYRE, *Baron*.

PERRY, *Baron*.

(a) On the twentieth of May 1652, Easter Term, in the fourth year of *Charles the First*, the case of *Taylor v. Coles* came before the court of exchequer. The plaintiff was rector of the parish of *Blatchley*, and the defendants were landholders therein. The bill stated, that the occupiers of land in the parish belonging to the manor of *Blatchley* were only, by the custom of the parish, to pay the rector, in lieu of the tithes of the said grounds, two shillings in every twenty shillings rent paid by them to the owners of the said lands, and so in proportion to the value of the lands. The defendant denied the custom. On reading the depositions of two of the witnesses in the cause, the custom was fully proved; but the Court was of

opinion, that it was fit to try it at law before any decree was made; and an issue was directed accordingly. But the defendants refused to try the issue; and on the third of February 1652, the Court ordered the defendant to pay eight pounds, one shilling, and two-pence for the arrears of his customary tithes of the said inclosed grounds belonging to the lord of the manor of *Blatchley*; and that the said customary tithe of two shillings for every twenty shillings rent to be paid by the said defendant as occupier of such inclosed grounds holden and used by him in the said parish of *Blatchley* of the lord of the said manor, be hereby established with the plaintiff until he shall be thereof evicted by law.

OSWYN against PAGE.

Cambridgeshire, 3d June 1782.

TRIN. TERM,
22 Geo. 3.

THE vicar of *Little Port*, in the *Isle of Ely*, claimed the great and small tithes of the parish; and stated, that the parish was large and extensive; that it consisted partly of uplands, and partly of marsh lands, called fens or fen grounds; that the said distinction of land was well known in the parish; that the plaintiff and his predecessors had been and was entitled to take the tithe of all kinds of corn and grain in the said fen grounds in kind; that they were as to such parts thereof as had been, were, or should be in grass, entitled to have a *modus* for the same, at the rate of an halfpenny an acre, in lieu of such grass, when fed by sheep or cattle, together with the customary payments, at certain rates and proportions for all such cattle fed therein; that there were in the said parish *Whelp Moore Fen* and *Lowell Moore Fen*, which were situated, butted, and bounded, as in the bill was particularly mentioned; that the defendants from 1769 had jointly and separately occupied several large parcels of land within the said fens; that in every year a great part of the said lands had been cropped with wheat, oats, barley, cole seed, and other grain; that other parts had been mowed or fed; that he had given notice to them to pay to him the tithes and *moduses* thereof; that they had refused so to do; that his right to the great tithes had been disputed several years ago by the impropriate rectors of the parish in the court of chancery; and the same determined by a

The vicar of *Little Port*, in *Cambridgeshire*, is entitled to the corn tithes of such parts of *Whelp Moore Fen* and *Lowell Moore Fen* as lie in the parish, in kind, and to a *modus* of $\frac{1}{2}$ d. an acre for depasturing sheep and other cattle on the said fens when laid down for pasture; but part of the said fens lie in the township of *Ely*.

OWYN
against
PAGE.

decree of that court in his, the plaintiff's, favour. The plaintiff further insisted, that *the Fens* lay in the parish; and as a proof thereof stated, that all the lands in the fens had, upon all perambulations of the boundaries of the parish, been taken into and included therein, as part of its lands; and that all the occupiers of lands in the said two fens had, whenever the same were occupied and thereby made profitable lands, always paid, and that the defendants did then pay all parish rates and taxes in respect thereof to the said parish of *Little Port*. The bill therefore prayed a discovery, account, and payment of the tithes and *moduses* in respect of the lands in *Whelp Moore Fen* and *Lowell Moore Fen*, occupied by the defendants since the time of their first becoming occupiers thereof.

The defendants admitted, that the parish consisted of uplands and marsh lands, called *Fen Grounds*; that the plaintiff, as vicar, was entitled to the great and small tithes arising in such parts of the said parish as were distinguished and known by the name of *Fen Grounds*, or to some *modus* in lieu thereof; that the fen grounds called *Whelp Moore Fen* and *Lowell Moore Fen* were situated and bounded in manner as stated in the bill; that part of *Whelp Moore Fen* was in the parish of *Little Port*; but they denied, that the whole thereof was in *Little Port*, or that any part of *Lowell Moore Fen* was in the said parish; and on the contrary insisted, that the whole of *Lowell Moore Fen*, and such part of *Whelp Moore Fen* as was not in *Little Port* lay in the city or township of *Ely*. They also admitted, that they occupied jointly and severally large parcels of lands in the two fens, amounting to six hundred and fifty-four acres.

An issue was directed to try, "Whether the lands for the
" tithes whereof the complainant's bill of complaint in this cause
" hath been exhibited, and which are in the joint occupation of
" the defendants, being part of the two fens called *Whelp Moore*
" and *Lowell Moore*, are situate in the parish of *Little Port*, in the
" county of *Cambridge*, or not."

But it does not appear what further proceedings were had in the cause.

TRIN. TERM,
XI. GEO. 3.

FAIRFAX against WRIGHT.

Yorkshire, 6th June 1782.

The impropria-
tor of the great
and small tithes
of *Bilbrough*, in
Yorkshire, is en-
titled to receive
them in kind.

THE plaintiff claimed the tithes of corn, grain, hay, and other tithes, both great and small, arising in the parish of *Bilbrough*, in the county of *York*.

The defendant *Wright* said, that he was occupier of two ancient farms in the parish; that in 1777 he had growing thereon the titheable matters stated in the bill; that tithes in kind for the

the said two farms had never been paid, but that certain *modus*es had been immemorially accepted in lieu thereof; that there were several ancient farms in the parish, consisting of houses, inclosed lands, and open fields; that before the farms were so divided, the occupiers thereof, along with the said two farms occupied by him, paid yearly forty pounds and eightpence, as a *modus*, in lieu of all tithes, both great and small; that the said several farms had been several years ago divided; that they had become the property of several different persons; that the said two farms which he rented were part of them; that when they became so separated, the occupiers paid to the minister of the parish their proportion of the said *modus*, in lieu of all tithes arising from the several farms and lands; that the farms he occupied had immemorially paid at *Michaelmas*, or so soon after as demanded, to and for the use of the minister of the said parish, for part of the first farm, one pound, thirteen shillings, and for the other part, fourteen shillings, as and for his part of the said forty pounds and eightpence, and as a *modus* in lieu of all tithes arising thereon; but that he could not particularly state his share of the said *modus* for his other farm.

FAIRPAX
against
WRIGHT.

THE COURT ordered the defendant to account for the values of the tithes demanded by the bill, with costs.

WILLIAMS *against* EDE.

Sussex, 7th June 1782.

TRIN. TERM,
22. GEO. 3.

THE rector of *Shermanbury*, in the county of *Sussex*, claimed the tithes of a *water corn mill*, namely, the tenth part of the clear profits arising from the corn ground therein, over and above all the necessary charges and expences, from *Michaelmas* 1779.

The rector of *Shermanbury*, in *Sussex*, is entitled to the tenth part of the clear profits of the corn ground at the *water corn mill* belonging to the lord of the manor of *Shermanbury*, as and for the tithes thereof.

The defendant admitted, that he occupied, as tenant, a *water corn mill* in the parish; that it was part of the freehold estate of *J. Challen*; that the tithes, if any were payable for the said mill, should be the tenth part of the clear profits thereof; and said, that he had been occupier of the said mill, as tenant, ever since *Midsummer* 1765; that he had never paid any tithe for the same, nor had any ever been before demanded; that *J. Challen* had ever since his marriage, in right of his wife, been seised as well of the said mill as of the advowson of the rectory and manor of *Shermanbury*; that the said mill was an ancient *water corn mill*, and was erected long before the reign of *Edward the Sixth*, and before the ninth year of *Edward the Second*; and that no tithe nor composition in lieu of tithe had ever been paid for the said mill to any rector of the said parish; but that the said mill had, from the first erection thereof, been used and occupied

WILLIAMS
against
EDR.

occupied without paying, and as not being liable to the payment of tithes ; and that no tithe had, to his knowledge, ever been paid for the same ; and he denied, that he had ever pretended that any *modus* or prescriptive payment was payable, or had ever been paid, to the rector of the said parish, in lieu of tithes of the said mill, or as a temporary composition for the same ; and he insisted, he ought not to be decreed to account with the plaintiff for the tithe of the profits of the said mill.

The plaintiff replied ; the defendant rejoined ; and witnesses were examined on both sides ; and upon hearing counsel for both parties ; and upon reading the depositions of *S. Hoadley* to prove the following book (which was objected to by the defendant's counsel, and the objection over-ruled), being an ancient book of the rectors of *Shermandbury* ; and reading entries from the said book, dated the twenty-fifth of *March* 1685, of a composition of ten pounds a-year for the tithes for three years, viz. for the mill, &c. with *J. Gratwick* ; entries, dated the third of *January* 1685, the twenty-fourth of *July* 1686, the twenty-eighth of *August* 1690, the twenty seventh of *March* 1702, 1711, and the eighth of *April* 1713 ; a receipt signed *M. Williams*, number 26, dated the nineteenth of *April* 1769, as follows : " Received of *John Challen, Esquire*, one pound, ten " shillings, in full for half-a-year's composition for the place, " land, and mill ;" and other receipts down to *Michaelmas* 1779 ; an indenture, dated the twenty-ninth of *January*, in the fourth year of *James the First*, between *Hugh Vyncent* and *Robert Vyncent* and *William Coomber* ; and a counterpart of a lease, dated the third of *January* 1749, signed *William Heaver*.

THE COURT directed an issue to try, " Whether the plaintiff was entitled to the tithe of the mill in question."

The issue was accordingly tried ; and the jury found, that the plaintiff was entitled to the tithes of the mill in manner and form as he in his declaration had alledged.

THE COURT therefore, on the twenty-seventh of *May* 1783, ordered the defendant to pay, by consent of the parties, five pounds *per annum*, as a composition for the tithes in kind of the mill from *Michaelmas* 1779 to *Michaelmas* 1780, with costs at law ; but, by the like consent, without costs in equity.

SKYNNER, *Chief Baron*.
EYRE, *Baron*.
PERRY, *Baron*.

OGLANDER *against* LORD POMFRET.TRIN. TERM,
22. GEO. 3.*Northamptonshire, 5th July 1782.*

THE bill stated, that the warden and the scholars of *New College*, in *Oxford*, were improPRIATORS of *East Neston* and *Hulcot*, in *Northamptonshire*, and entitled to the tithes of corn, grain, and hay, yearly arising throughout the said parish; that by indenture, dated the nineteenth of *December 1707*, they demised the same to *Lord Leinster*, afterwards *Earl Pomfret*, for ten years, at four pounds a-year; that he entered thereupon, and took the tithes thereof as afore said to his death in 1753; that his son then entered, and had ever since received the same, as lessee of the College, up to *Michaelmas 1778*; that the said *Earl* had been, for some years past, the owner of all or most of the lands in the parish; that particularly in *December 1778*, he occupied divers parts of them; and that the defendants, as tenants to him, held the remainder; that the plaintiffs being minded to take in kind the tithes arising from the lands in the defendant's occupation, gave them respectively due notices in writing, that after the expiration of the year 1778 the plaintiffs would take their tithes of hay, corn, and grain in kind. The bill then charged, that the defendants respectively in 1779 had reaped, mowed, and taken upon and from off the said lands, wheat, barley, oats, rye, pease, beans, and hay. The bill further charged, that the plaintiffs as improPRIATORS, on the third of *December 1777*, gave the *Earl of Pomfret* notice in writing to quit and yield up to them, upon the tenth of *October* then next, the said rectory and premises, and all the tithes of corn, grain, and hay, growing in *East Neston* and *Hulcot*, or elsewhere, to the said rectory belonging; that he persisted in refusing to account with them, or to make any satisfaction; and that he had forbidden the defendants the tenants to account. The bill further stated, that the defendant *Lawford* claimed to be entitled, as vicar, to the tithe of hay arising in the parish. The bill then prayed, that the defendants might account for the single value of the tithes of the corn, grain, and hay, which they respectively had taken from off their said lands, and pay what should appear to be due on such account.

The defendant *T. Inns* and others said, that they knew not of the lease in the bill mentioned, or by what tenure *Earl Pomfret* held the tithes; but that the lands by them holden in the parish of *East Neston* were either exempted from the payment of any tithes whatsoever, or the tithes thereof had been purchased by the *Earl's* ancestors, and the occupation of the lands granted tithe free, for that no species of tithes had been demanded of them for the said lands until the delivery of the said notices on the twelfth of *December 1778* and the fifth of *November 1779*. They

OGLANDER
against
LORD
POMFRET.

They admitted, that the *Earl* had desired them to set out their tithes of corn and grain for 1780 and for all future years; but denied, that the plaintiffs had any right to the tithes of hay or grass arising on their said lands.

The defendant *the Earl of Pomfret* denied, that the plaintiffs were, to his knowledge, impropriators of the rectory, and entitled to the tithes of corn and grain; and said, that the vicar was entitled to all tithes, except the tithes of corn and grain. He also denied all knowledge of the lease dated the nineteenth of *December* 1707; and insisted, that if any such lease had been granted to *Lord Leinster*, he had received the tithes of hay by virtue thereof. He admitted, that after the death of *Lord Leinster* in 1711, and of his, this defendant's, father, he had entered upon the said rectory, and had received all the tithes of corn and grain belonging thereto, as the tenant of the plaintiffs, at a yearly rent, from eleven pounds to fifteen pounds, according to the price of corn at *Oxford Market*; and that he did not hold the same upon the terms as mentioned in the bill; and he averred, that he had paid his rents to the plaintiffs up to *Michaelmas* 1778. He also admitted, that for several years past he had been owner of all or most of the lands in the parish; that in *December* 1778 he occupied several acres of his lands; that the plaintiffs caused the notice to be delivered to him as stated in the bill; that in 1779 he occupied several acres of meadow land, and grew and cut thereon hay, but no corn or grain: and he submitted to make the plaintiffs a satisfaction for the value of the said tithes of hay, in case they were entitled to the same. He admitted, that the plaintiffs, about the third of *December* 1777, caused such notice to be given to him as stated in the bill; but denied that he had entered into any negotiation for a renewal of the said lease; and said, that he had considered such notice as one to set out his tithes of hay, corn, and grain in kind, after the tenth of *October* next ensuing the date of the same.

The defendant *Lawford* said, that the plaintiffs were seised of the impropriate rectory, and entitled to receive the tithes of corn and grain throughout the parish; but denied, that they were entitled to receive the tithes of hay therein; and insisted, that he, as vicar, was entitled, by endowment, prescription, or usage, to the tithes of hay, and to all other tithes whatsoever, arising throughout the said parish, except the tithes of corn and grain.

The plaintiffs replied; the defendants rejoined; and witnesses were examined on the part of the plaintiffs only; and upon hearing counsel for all parties; and upon reading the following evidence for the plaintiffs, viz. the ministers accounts from the augmentation office touching the priory of *Sywardley*, in *Northampton*,

Northampton, intituled, "*Prioratus Monalium de Sywardsley, 27 Henrici 8^{ti}, decima Rector. de East Neston, et de Gl. 13s. 4d. de Red. et Co. sic. decim. Proven. de decimis Garbar. et feni ibid. in manu antedict. nup. Prior;*" a lease from a book in the augmentation office of the rectory of *East Neston*, granted to *J. Brooke*, in the twenty-eighth year of *Henry the Eighth*; the minister's accounts of the thirtieth year of *Henry the Eighth*; and the account of the said *Thomas Brooke*, intituled, "*Firm. decim. Rectoria de East Neston, et de Gl. 13s. 4d. &c. firm. co. sic.;*" a lease from *James Rogers* and *Richard Veale*, dated the twenty-eighth of *January*, in the fourth and fifth years of the reign of *Philip and Mary*; a release from *Sir H. Norrys* to *Robert Doyley* and *William Place* of *Sywardsley Parsonage*, dated the sixteenth of *May*, in the fourteenth year of *Queen Elizabeth*; a lease, dated the first of *April*, in the seventeenth year of *Queen Elizabeth*, from them, to *P. King* and *Richard Way*, of the rectory of *East Neston*, with the tithes of corn, grain, and hay, for ninety-nine years, at four pounds *per annum*; a conveyance from the said *Doyley* and *Place* to *New College*, in *Oxford*, of the said rectory, &c. dated the tenth of *August*, in the seventeenth year of *Queen Elizabeth*; a lease from *New College* to *Sir W. Farmer* of the said rectory, together with the tithes of hay, corn, and grain, dated the thirty-first of *July*, in the twenty-seventh year of the reign of *Charles the Second*; a book from the archives of *New College*, containing entries of rent received from the year 1618 to the year 1647, in the account of *Hugh Evans*, schoolmaster of *Thame*, in the county of *Oxford*; another book from the archives in the said college, in which are contained the following entries, viz. "1628, Received of *Sir Hatton Fermor*, for the rent of *East Neston Parsonage*, four pounds, *Annunciation*, forty shillings, *Michaelmas*, forty shillings;" "1640, Received of the *Lady Fermor*, the like;" the burfar's roll of the said college, in which is the following entry, "*East Neston*, 1675, eleven pounds, eighteen shillings, and eightpence: Received of *Sir William Fermor*, ditto;" the burfar's book from the said college from the year 1674 to 1675 and 1676, intituled, "*East Neston Rent*;" the corn book of the said college in the year 1776, intituled, "*East Neston*;" also reading the answer of the defendant *the Earl of Pomfret* from folio 7 to folio 10; and the answer of the defendants the occupiers; and also the depositions of several witnesses; and reading, for the defendant *Lawford*, an endowment of the vicarage of *East Neston*, dated the ninth of *April* 1403; and hearing the reply; the cause was adjourned for the judgment of the court.

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against
LORD
POMFRET.

THE COURT now ordered the deputy to take an account of what was due for the tithes of corn, grain, and hay, which the defendants *Inns*, *Ward*, *Hill*, and *White*, four of the occupiers, had on the farms in their respective occupations from

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against
LORD
POMFRET.

from the time demanded by the bill ; AND ALSO an account of what was due for the like period in respect of the tithes of hay which the defendants *the Earl of Pomfret, Dunckley, Adkins, Clark, and Davis*, had taken from the farms in their occupations.

But it appearing to the Court, that *the Earl of Pomfret, Dunckley, Adkins, Clark, and Davis*, had not any tithes of corn and grain for which the plaintiffs sought an account, it was further ordered, that so much of the bill as required the said last-named defendants to set forth an account of the said tithes of corn or grain be dismissed with costs.

THE COURT further ordered the bill as against *Lawford* to be dismissed, but without costs.

THE COURT further ordered the several other defendants to pay their costs, except the costs of the tithes of corn or grain demanded by the bill from *the Earl of Pomfret, &c.*

SKYNNER, *Chief Baron.*
EYRE, *Baron.*
HOTHAM, *Baron.*
PERRY, *Baron.*

HILARY TERM
23. GEO. 3.

SMITH against BROWN.

Essex, 27th January 1783.

The rector of *Great Leighs*, in *Essex*, is entitled to the great and small tithes of the farm called *Rochester's* and *Lilly's*, and also of the farm called *May's*, in kind.

THE rector of *Great Leighs*, otherwise *Much Leighs*, in the county of *Essex*, claimed the tithes, great and small, which had arisen since *Michaelmas 1771* on two farms, the one called *Rochester's* and *Lilly's*, and the other *May's*.

The defendant put in his plea and answer ; and to so much of the bill as required a discovery of the lands occupied by him, and of the titheable matters arising thereon, and the values thereof, except the tithes of wood, he pleaded articles of agreement, dated the fourteenth of *July 1768*, by which it was agreed, that from the tenth of *October 1767* all the farmers and occupiers should pay four shillings in the pound of their yearly rents, in full of tithes both great and small ; and that tithe wood should be paid in kind ; and that those who defaulted should pay one shilling more, &c.

Upon hearing counsel for the plaintiff ; and no one appearing for the defendant ; and reading the bill ; and an order whereby the defendant undertook to appear *gratis* ;

THE COURT ordered the deputy to take an account of the tithes of the farms called *Rochester's* and *Lilly's*, and *May's*, in 1772, and in every subsequent year, unless cause were shewn to the contrary.

The

The defendant paid the five pounds costs ; and the Court, on the thirteenth of *May* 1783, directed an issue to try, “ Whether
 “ on the twenty-ninth day of *September* 1771, and from that
 “ time until the twenty-ninth day of *September* 1775, the
 “ defendant *John Brown* was the sole occupier of the two
 “ several farms called *Rochester’s* and *Lilly’s*, and *May’s*, whereof
 “ tithes are demanded by the bill.”

SMITH
 against
 BROWN.

But it does not appear that any further proceedings were had.

DAVIE against WESTON.

HILARY TERM
 23. Geo. 3.

Warwickshire, 28th January 1783.

THE bill stated, that *W. T. Bromley* was, at his death, seised of the patronage and right of presentation to the rectory of *Haseley*, in the county of *Warwick* ; that he died so seised in the year 1769 ; that the defendant *Bromley*, his eldest son and heir, thereupon became seised thereof ; that about *December* 1775, the plaintiff, upon the cession of his father, was instituted and inducted into the said rectory ; that he afterwards, in due form, read, proclaimed, and subscribed the thirty-nine articles in the said church ; and that he thereby became entitled to the tithes arising therein ; that the defendants *Weston* and *Barnett*, from *Michaelmas* 1777, had severally occupied lands therein, viz. *Haseley Farm*, *Hatton Farm*, and *Beaufall Farm*, and had yearly thereon clover and other grass, which they had depastured by unprofitable cattle ; that they had cut and sold underwood and bushes from off the said lands ; that they had refused to pay the tithe thereof ; that tithes in kind were due to the rector of common right ; and that there was not any instrument or writing extant whereby their farms and lands, or any part thereof, ever had been, or ought to be, discharged or exempted from payment of tithes ; that by A TERRIER, dated the sixteenth of *October* 1585, it was said, “ MEMORANDUM, There are
 “ certain lands lying in the three common fields of *Hatton*,
 “ now in the tenure of one *Robert Eberal*, called *the Ferlye*
 “ *Ground*, the tithes or tenths whereof belong to the parsonage
 “ of *Haseley*. ITEM, There had been and was paid to the
 “ parson there the tenth or tithes of corn, hay, and wood
 “ growing within the said parish of *Haseley*, and all other
 “ customable tithes, except milk, for which the parishioners did
 “ yearly pay one penny for every cow ;” that by another TERRIER of the parsonage of *Haseley*, dated the first of *April* 1617, after stating the particulars of the said parsonage-house and glebe land, it contained as follows : “ ITEM, Tithes through-
 “ out the parish in their kinds now paid as heretofore to our
 “ knowledge

The rector of *Haseley*, in *Warwickshire*, claims the tithes of *Ferlye Ground*, *New Wood*, *Earnett’s Farm*, and *Weston’s Farm* ;

and states, that all the tithes thereof are payable in kind, excepting milk, for which there is a *modus* of 1d. a cow.

DAVID
against
WESTON.

“ knowledge hath been paid. ITEM, The tithe in kind of a
“ parcel of ground lying and being in the field of *Hatton*;
“ commonly called or known by the name of *Ferlye Ground* ;”
that the tithes in general had, for many years, been com-
pounded for, sometimes at one price, and sometimes at an-
other ; that the plaintiff did, about *October* 1777, cause the de-
fendants severally to be served with a notice in writing, “ That
“ from and after the tenth day of *October* 1777, they, the said
“ *Thomas Weston* and *Thomas Barnett* were to set out for the
“ plaintiff, as rector of *Haseley*, tithes in kind of all titheable
“ matters and things which should arise or become due to the
“ plaintiff for or in respect of the lands and tenements which
“ they respectively occupied in the said parish ;” that the
defendants still continuing obstinate in not setting out their
tithes in kind, the plaintiff, about the eighteenth of *June* 1778,
caused the said defendants to be served with another notice,
“ That he should not accept of any composition or payment
“ in lieu of tithes to become due to him as rector afore-
“ said, from and after the twenty-first day of *December* then
“ next ensuing, for or in respect of the lands and hereditaments
“ in their respective occupations in the said parish of *Haseley* ;”
that they had respectively refused to set forth the said tithes
in kind, or make him an adequate satisfaction for the same,
as also for *Easter* offerings, or discover their titheable matters,
or any thing. The bill therefore prayed, that an account
might be taken of all titheable matters and things (except milk)
which the said defendants *Weston* and *Barnett* respectively
had since *Michaelmas* 1777 upon their said respective farms, and
the defendant ordered to pay the tithes thereof ; that they
might pay him what was due for tithe milk, according to the rate
appointed in the first-mentioned terrier ; that an account might
be taken of the number of cows they had respectively milked
in each year since *Michaelmas* 1777 ; and that the said defendant
might pay the plaintiff what was due to him for *Easter* offerings ;
and that the plaintiff’s right to the tithe in kind of all titheable
matters on the said lands, tenements, and hereditaments in their
respective occupations of the said defendants *Weston* and *Barnett*,
and whereof the defendant *Bromley* was the landlord, might be
established by the decree of this court.

The defendants
die, and the suit
is revived.

The defendants *Weston* and *Barnett* appeared ; but before
they answered they died ; and the plaintiff having filed his *bills*
of revivor against their proper representatives, they appeared and
answered.

The defendant
as to *Bromley*’s
Farm says,

The defendant *Bromley* an infant, by his guardian, said,
that he was, and ever since his father’s death had been,
the true and undoubted patron of the rectory of *Haseley*, in the
diocese of *Worcester* ; that the plaintiff had been (on the cession
of his late father) presented to the rectory by his late mother

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and one of his guardians ; that in consequence of such presentation, the said plaintiff had been thereupon duly instituted and inducted therein, and had read and subscribed the thirty-nine articles ; that he, the defendant, was owner of a considerable property in the said parish, and landlord of the farms late in the possession of *Thomas Weston* and *Thomas Barnett*, deceased ; that for a certain close called *New Wood*, supposed to have been formerly wood ground, tithes in kind had been immemorially paid, by the tenant thereof, to the rector of *Haseley* ; that tithes in kind of all titheable wood within the said parish had also been immemorially paid to the said rector ; but that there had been immemorially paid to the rector for the time being of the parish and parish-church of *Haseley*, by the tenants of the residue of his estate, divers yearly sums of money as *modus*es in lieu of all tithes arising therefrom, but not in lieu of *Easter offerings*, viz. four pounds and tenpence at *Easter*, that is to say, three pounds, eleven shillings, and tenpence, part thereof, in respect of part of the said farm formerly in the tenure of *Edward Twist*, and nine shillings, the residue of the said four pounds and tenpence, in respect of the residue of the farm formerly in the tenure of *John Redding* ;" that the said yearly payments had never been varied in quantity, save and except that the sum of three pounds, eleven shillings, and tenpence had heretofore been paid in manner following, viz. two pounds, eleven shillings, and sixpence, by the said *E. Twist* for the part he occupied, and one pound and fourpence, the residue thereof, for the residue of the land in respect of the tithes whereof the said *modus* had been payable ; that the farm late in the possession of *T. Weston*, deceased, was part of certain lands called *the Demesnes*, then in the occupation of *Thomas Bellamy* ; and that they had been formerly occupied by this defendant's grandfather, together with the said lands called *the Demesnes* (except certain fields or inclosures called *Pale Field*, *Hay Field*, and *Ferny Hurst*), which formerly composed part of *the Demesnes*, and had been let off by his said grandfather to one or more tenants ; that during the time he held the said demesnes as aforesaid, no tithes or yearly payments in lieu thereof had been paid for the same by him to the rectors, except as after-mentioned ; that the said fields or inclosures called *Pale Field*, *Hay Meadow*, and *Ferny Hurst*, had been held or occupied together with the said last-mentioned farm ; that there had been immemorially paid to the rector of *Haseley*, as a *modus*, in lieu of all tithes arising on the said farm called *the Demesnes* (except tithe wood), by the tenants or occupiers of the said farm, or of some part thereof, the yearly sum of nine shillings and tenpence, at *Easter* in every year, besides *Easter offerings* ; that during such times as *the Demesnes* were in the occupation of one person only, the said yearly sum had been paid by such one tenant ; but that when the said lands

that for *New Wood*, part thereof, tithes are payable in kind ;

but that for the remainder there was a *modus* of 4l. 10s. 10d. payable yearly, in lieu of the tithes thereof ;

that *Weston's Farm* was part of the lands called *the Demesnes* ;

and that there is a *modus* of 9s. 10d. payable at *Easter*, in lieu of the tithes thereof.

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against
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were divided among and let to more tenants than one, then such yearly payments had been made by the tenants or occupiers of the said lands called *Pale Field*, *Hay Meadow*, and *Ferry Hurst* (part of *the Demesnes*) or of some of them, but in lieu of the tithes of all the said lands called *the Demesnes*; that there had not been any variation in the said yearly payments in lieu of tithes of the farms late in the occupation of *T. Barnett* and *T. Weston* (except as aforesaid); or if any such variation should appear to have at any time been made therein, the same had happened through accident or inadvertency, and not with design to vary the said *modus*; and therefore the same could not be considered as *temporary compositions*.

The tenants of
Weston's Farm
answer in like
manner.

The defendants the *Westons*, the executors of *Thomas Weston*, said, that *Bromley* was the patron of the rectory; that the plaintiff was the rector; that *Bromley* was the owner of the farm late in the possession of *Thomas Weston*; and that he ceased to be tenant thereof at *Lady Day 1777*; and that the said farm was part of certain lands called *the Demesnes*; and he set forth the *modus* as aforesaid.

The tenants of
Barnett's Farm
answer in like
manner.

The defendants the *Barnetts* put in the like answer, as executors to *Thomas Barnett*, deceased; and admitted assets.

The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides; and upon hearing counsel for all parties; and reading several depositions on both sides; and on full debate of the matter;

The bill dismissed
as to tithes
in kind of *Barnett's Farm*.

THE COURT ordered the bill, so far as it sought an establishment of the right of tithes in kind of *Thomas Barnett's Farm* in the pleadings mentioned, to be dismissed with costs.

The tithes in
kind of *Barnett's Farm*, except as to milk, decreed.

THE COURT further ordered the deputy to take an account of all tithes in kind (except milk) which had arisen since *Michaelmas 1777* on the farm in the pleadings mentioned to have been in the occupation of the said *Thomas Barnett*, deceased, to the time of his death, with costs to this time; and that what should be so found due for tithes and costs should be paid to the plaintiff by the now defendants *the Barnetts*.

The *modus* of
ad. a cow decreed,
in lieu of
tithe milk.

THE COURT further ordered the deputy to take an account of tithe milk on the foot of the *modus* in the terrier first mentioned in the bill as to the said late *Thomas Barnett's* farm, but without costs; and also of *Easter offerings* from the said late *Thomas Barnett* likewise without costs; and what should be so found due for tithe milk and *Easter offerings*, in like manner as the said other tithes and costs, to be paid by the now defendants *the Barnetts* to the plaintiff.

THE

THE COURT further ordered an account to be taken against the defendants the *Westons* for *Easter offerings* due in the lifetime of their testator, to be paid by them to the plaintiff without costs.

DAVID
against
WESTON.
Weston's Easter offerings decreed.

THE COURT further ordered a trial at law upon the following issue, viz. "Whether, from time whereof the memory of man is not to the contrary, there hath been paid or payable to the rector for the time being of the parish-church of *Haseley* afore said, as a *modus*, for and in lieu of all tithes arising, growing, or renewing on the said farm called *the Demesnes* (except tithe wood), by the tenants or occupiers of the said farm, or some part thereof, the yearly sum of nine shillings and tenpence, payable at *Easter* in every year, besides *Easter offerings*."

An issue directed to try, whether 9s. 10d are payable at *Easter*, in lieu of the tithes of *the Demesnes*.

The defendants in equity to be plaintiffs at law; to be tried by a special jury; the consideration of costs of the said trial, and also the costs of this cause as between the plaintiffs and the defendants *Bromley* and the *Westons*, and of all further directions respecting the said farm late in the occupation of the said *Thomas Weston*, to be reserved until after the said trial.

The issue was accordingly tried; and the jurors found, that the *modus* as stated in the issue had not been paid at *Easter*; but that, from time whereof the memory of man was not to the contrary, there had been paid and payable to the rector for the time being of the parish-church of *Haseley* afore said, as a *modus*, for and in lieu of all tithes arising, growing, and renewing on the said farm called *the Demesnes* (except tithe wood), by the tenants and occupiers of the said farm, the yearly sum of nine shillings and tenpence, payable at the feast-day of *Saint Thomas* in every year, besides *Easter offerings*."

The jury find, that the said *modus* is payable on *St. Thomas's Day*, and not at *Easter*.

On the twenty-sixth of *January* 1784, this cause came on to be further heard on the *postea*; and upon hearing counsel on both sides; and reading the said decretal order and *postea*;

THE COURT ordered the bill to be dismissed as against the *Westons*, with costs both at law and in this court.

The bill as to *Weston's Farm* dismissed.

MILARY TERM
23. GEO. 3.

THE BISHOP OF LLANDAFF *against* KEY.

Glamorganshire, 31st January 1783.

The senior vicar choral of the cathedral of Llandaff claims the small tithes of *Raffer's Farm* and *the Great Farm*.

THE bill stated, that there had been immemorially two parishes, called *Llandaff* and *Whitchurch* (a), in the county of *Glamorgan* and diocese of *Llandaff*; that *the great tithes* thereof, except the tithes of wood, belonged exclusively to four members of THE CATHEDRAL CHURCH, viz. to the bishop as treasurer, to the two prebendaries of the prebends of *Fairwell* and *Fairwater*, and to the precentor; that the small tithes of those parishes, and the tithe of the wood, belonged to the bishop, archdeacon, and chapter of the cathedral in their corporate capacity; and that the plaintiffs in their capacity first before-mentioned did not claim the said small tithes; that for a great number of years past a clergyman belonging to the said church, called a *senior vicar choral*, had performed several duties within the church, and also had served the cures of the above-named parishes; that he was, from time to time, chosen into that office by the chapter of the cathedral, but had never been instituted into the office of *vicar choral*, or to the cure of the said churches; that the small tithes and the tithe of wood of the said parishes, so as aforesaid belonging to the bishop, &c. had been by them assigned to the said *senior vicar choral*, or he had been always permitted by them to receive the same for his performing the said office of *senior vicar choral*, and for serving the cures of the said two parishes; that the plaintiff *Hall*, before 1779, had been, and still was, the *senior vicar choral*; that he

(a) On the twenty-eighth of October 1725, Michaelmas Term, in the tenth year of *George the First*, the case of *Price v. Rees* came before the court of exchequer. The bill stated, that for time immemorial, the person, who was appointed by the archdeacon and chapter of the cathedral of *Llandaff* vicar choral of the said church, was entitled to the small tithes of the parishes of *Llandaff* and *Whitchurch*; that *Mr. Maddox*, having been in 1718 appointed vicar choral, had let the small tithes of the said parish to the defendant for 40l. a-year; that *Maddox* died before half-a-year had expired; that on the twenty-ninth of June 1719 *Mr. Davis* succeeded him; that the defendant paid to him twenty pounds due since his death; that he continued farmer thereof, and received the tithes at the same rent for the year 1719; that he paid him two quarterly payments, and in the month of December 1719 died; that on the twenty-ninth of June 1720,

the plaintiff was appointed vicar choral; that the defendant had paid him two quarters that had become due subsequent to *Davis's* death; that the defendant continued farmer of the said tithes for that year under the said agreement; that he paid the plaintiff the twenty pounds that became due on the twenty-eighth of November 1720; that he then declared that he would hold the said tithes no longer, and had refused to pay the two last quarters rent which had become due on the twenty-eighth of February 1720 and the twenty-eighth of May 1721. The bill therefore prayed an account and satisfaction for the tithes. The defendant admitted the agreement; but denied, that he had agreed to hold the tithes from the plaintiff for any longer term than from the second of December 1719 to the second of December 1720; and THE COURT, upon reading the proof and hearing counsel, dismissed the bill with costs.

had

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against
KEY.

had duly been elected ; that he had served the cures thereof ; that he was entitled, by consent, to have and receive from the occupiers of land therein, the tithes of all wood, and the tithes of all other titheable matters arising thereon, other than of corn, grain, and hay ; that according to the custom of the said parishes, for time immemorial, the said plaintiff *Hall* was entitled to have and receive as follows, *viz.* of every occupier of lands within either of the said parishes from the first of *November* in one year to the thirty-first of *October* in the next year, both inclusive, the following payments, **THAT IS TO SAY**, for a calf, or any number of calves fewer than seven, a full tenth part of the value of each such calf ; and if there are seven, eight, or nine such calves, then one of such seven, eight, or nine calves, or the full value of one of them, the said plaintiff paying to such occupier, if he has only seven calves, the sum of one shilling and sixpence ; if only eight, one shilling ; and if nine, sixpence ; and of pigs, a full tenth part of the value of each pig, if there happen to be fewer than ten ; but that if ten such calves or pigs, then one of such ten ; and if more calves or pigs than ten, then the same payment and proportion for any number exceeding ten, as before-mentioned ; that he is also entitled to the tenth part of the value of every colt fallen in the said parishes ; that the defendants had, for several years past, held and occupied certain lands therein, on which they had great quantities of milk, and a number of calves and colts, and a great quantity of herbage eaten by barren and unprofitable cattle, amongst which were a number of sheep fatted and sold between the first of *November* 1779 and the shearing-time in the summer in 1780, from such shearing time in 1780 to the first of *November* instant, when the year for tithing ends, according to the custom in each of the said parishes ; that they had severally taken away from off their said lands all the said milk, calves, colts, and pigs, and converted the whole to their own use, and also the said herbage, without setting out the tithes thereof, or making the plaintiffs any satisfaction for the same, though often applied to, but they refused them under several pretences, and set up certain *modus*es payable in lieu, whereas the plaintiffs charged the contrary. The bill therefore prayed, that the right of the plaintiffs to the tithes of milk, calves, and other titheable matters aforesaid, and all other vicarial tithes produced on the said several parcels of land, or any of them, and to the several payments and proportions before mentioned, might be established ; and that an account might be taken of all the milk, calves, colts, pigs, and the grass lands fed by barren cattle, which the defendants respectively had during the time in the bill mentioned ; and also of the number of sheep fatted and sold during the said time ; and that the defendants might pay to the plaintiff *Hall* the money which should be reported due to him

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him for such tithes, according to the proportions before-mentioned, and the full value of the tithes of the said milk, calves, and other titheable matters.

The defendant insists on a *modus* in lieu of the tithes of calves; and that a sum of 4l. 14s. 2d. had been annually paid, for time immemorial, in lieu of all small tithes and *moduses* due from the said two farms.

The defendant *Key* admitted, that there were two such parishes; that the great tithes therein belonged to four members of the cathedral church, exclusive of all the other members thereof; and the small tithes or payments in lieu thereof to the bishop, &c. as in the bill was stated; and said, that the small tithes had been assigned to the *senior vicar choral*; that he had been permitted to receive the same, or the *moduses* in lieu thereof, as a satisfaction for his performing the said office, and for serving the said cure; and that the plaintiff *Hall* was duly elected, had performed the said office, and was entitled to receive the same. He further said, that for about four years past he had occupied two tenements, and sundry parcels of land, called *Rossey Farm* and *the Great Farm*; that, for time whereof the memory of man was not to the contrary, the tithe in kind of milk had never been paid within the said parish, but that, for time immemorial, within the said parish of *Llandaff*, the general custom and usage in the said parish was, that occupiers of land within the said parish from the first of *November* in one year to the thirty-first of *October* in the next year, both inclusive, had been accustomed to pay, and ought to pay, to the plaintiffs the bishop, archdeacon, and chapter of the said cathedral church, in their corporate capacity, or to their *senior vicar choral*, in lieu and satisfaction of tithe of milk, the several *moduses* or sums following, *viz.* for every cow having a calf, tenpence; and for every heifer having a calf, eightpence; and for every fallow cow having no calf, sixpence; and for every calf to the amount of six calves, sixpence; and one of every seven, eight, or nine calves, as the tithe thereof, the person entitled to such tithes paying to the occupier, if only seven calves, one shilling and sixpence; if only eight calves, one shilling; and if only nine calves, sixpence; and the tenth one of every ten calves, as the tithe thereof: and he stated, as evidence of the above payments, a suit in this court, in *Trinity Term*, in the twenty-eighth year of *George the Second*, the *Bishop of Llandaff v. Williams*. He further said, that there was not any fixed usage or custom about tithes of pigs or colts; but that the tithes thereof were due in kind. He further said, that before his occupation of *Rossey's Farm*, for time immemorial, a gross sum of one pound, fifteen shillings, had been annually paid, as a *modus*, in lieu and satisfaction of all small tithes arising on the said farm, which had immemorially consisted of about one hundred and four acres, and was abutted as in his answer mentioned; that he had, during the several years he had occupied the same up to the thirty-first of *October* 1779 paid the like annual payment or *modus* of one pound, fifteen shillings, to the tenant of the plaintiff *Hall* for the small tithes

tithes of the said parish ; that about the twentieth of *December* 1779, he paid to the plaintiff *Hall's* tenant four pounds, fourteen shillings, and twopence, in full for all the small tithes arising on his said two farms from the first of *November* 1778 to the thirty-first of *October* 1779, both inclusive, viz. one pound, fifteen shillings, for *Rosser's Farm* as aforesaid, and two pounds, nineteen shillings for *the Great Farm*, as by the receipt set forth in his answer : and he set forth the titheable matters and things he had upon the said farm for the year following, and said, that he was ready to make the plaintiffs satisfaction for the same as aforesaid ; and made a tender thereof.

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KEY.

and that he had
tendered to the
plaintiff the
sums that were
due to him ac-
cordingly.

The defendant *Evans* spoke to the like effect ; and set forth the lands he occupied, &c.

The plaintiffs replied ; the defendants rejoined ; and witnesses were examined on both sides ; and upon hearing counsel for all parties ; and reading several depositions ;

The cause
heard.

The plaintiffs declined the offer made to them by the court to try the validity of the *modus* of one pound, fifteen shillings, a year, for and in lieu of all small tithes yearly arising on *Rosser's Farm*.

The plaintiff
refuses to try the
validity of the
moduses.

THE COURT thereupon ordered so much of the bill as sought to establish the plaintiff's right to such small tithes on *Rosser's Farm*, and as sought a discovery of and satisfaction for the tithes of milk and calves, and for the tithes of the several titheable matters and things yearly arising, renewing, and increasing on *Rosser's Farm* (the tithes of corn, grain, and hay only excepted) to be dismissed with costs.

The bill dismiss-
ed as to *Rosser's*
Farm with costs

The plaintiffs agreed to accept the tenders mentioned in the answers ; and therefore it was ordered, that so much of the bill as related to such tenders be dismissed, but without costs.

and also as to
so much thereof
as related to the
tenders.

WHINFIELD against CAIRNS.

HILARY TERM
23. GEO. 3.

Durham, 6th February 1783.

THE bill stated, that the dean and chapter of *Durham* being the impropiators of the tithes both great and small, and entitled to all oblations, obventions, and other ecclesiastical dues, arising in the townships of *Cornhill* and *Tillmouth*, in the chapelry of *Cornhill*, in the county palatine of *Durham*, and the titheable places thereof, and to the glebe land within the township of *Cornhill*, by indenture, dated the twentieth day of *November* 1776, demised to the plaintiff all that their glebe land within the township of *Cornhill*, with the appurtenances, together with

The dean and
chapter of *Dur-*
ham are entitled
to the tithes of
the townships
of *Cornhill* and
Tillmouth in
kind.

WHITFIELD
against
CAIRNS.

the Easter Book belonging to the chapel of *Cornhill*, and also all their tithe hay, and all and singular small tithes of the townships of *Cornhill* and *Tillmouth*, with all the profits, &c. thereto belonging (the tithe corn of *Cornhill* and *Tillmouth*, and the tithe of wool, lambs, and fish of the said townships only excepted), to hold for twenty-one years, if the plaintiff should so long live and continue curate of *Cornhill*, in as ample a manner as any farmers of the premises theretofore had enjoyed the same, under the yearly rents and reservations, and subject to the covenants therein-mentioned; that the plaintiff, by virtue of the said indenture, immediately entered into possession of the glebe land, and became entitled to the said demised premises, and had ever since been, and still was, curate of the said chapel of *Cornhill*; that the defendants had had, since the first of *June* 1778, on their lands in the said townships, turnips, potatoes, dry, barren, and unprofitable cattle, clover grass, turkies, pigs, geese, hens, lint, *Easter* dues, and other titheable matters, the tithes of which they had refused to pay, on a pretence, that certain *modus*es were payable in lieu thereof, which the plaintiff denied; AND PRAYED, that the defendants might severally account for and pay the same.

The defendants insisted, that there were *modus*es payable for their farms in lieu of the tithes arising thereon; and that they had been paid to the said curate by their landlord *Sir Francis Blake*; but they admitted, that they had paid to the plaintiff several species of tithes in kind.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and upon hearing counsel on the part of the plaintiff; and reading an order dated the twenty-ninth of *January* last to read and prove exhibits at the hearing; and reading a copy of a grant from THE ROLLS CHAPEL, dated the sixteenth day of *May*, in the thirty-third year of *Henry the Eighth*, to the dean and chapter of *Durham*; a lease from the dean and chapter of *Durham*, dated the twentieth of *November* 1776, of the glebe lands and great and small tithes within the townships of *Cornhill* and *Tillmouth*, in the chapelry of *Cornhill* and the titheable places thereof; several proofs in the cause; and hearing counsel for the defendants;

THE COURT ordered the defendants to account for all the several titheable matters and things demanded by the bill, with costs.

SPEED

SPEED *against* LONGLAND.EASTER TERM
23. GEO. 3.*Hampshire, 9th May 1783.*

THE vicar of *Eling*, in the county of *Hants*, claimed the tithes of hay, hay grafs, and all small tithes, yearly arising therein.

The vicar of *E. ling*, in *Hampshire*, is entitled to the tithes of hay grafs and all small tithes in kind.

The defendants said, that a *composition* of one shilling in the pound had been immemorially paid in lieu of all tithes due to the plaintiff, as vicar, until the twenty-fifth of *March* 1778.

THE COURT ordered the deputy remembrancer to take an account of what was due for the several titheable matters and things demanded by the bill, with costs; and on the thirteenth of *July* 1784, the deputy's report was confirmed, and the defendants ordered to pay the several sums reported due, with subsequent costs.

PAYNE *against* POWLETT.EASTER TERM
23. GEO. 3.*Dorsetshire, 13th May 1783.*

THE vicar of *Buckland Newton*, otherwise *Buckland Abbas* (a), in the county of *Dorset*, claimed the small tithes arising therein (b); and stated, that the defendants the dean and chapter of *Wells* were impropriators of the rectory, and entitled to the tithes of corn, grain, hay, and wood; that they being so entitled did, before 1770, lease the same to the defendant *Anne Powlett*; that since the said year, many of the landholders in the parish, and particularly the defendant *Pople*, had sown their lands with clover and other grafs seeds, which they had threshed for seed; that the tithe thereof being a small tithe ought to have been paid to the plaintiff as vicar; but that the lessee of the rectory had, since the said year, received the said tithes of clover seeds and other seeds; and pretended, that she was entitled thereto as lessee as aforesaid. The bill therefore prayed, that the plaintiff's right to the said tithes might be established; that the defendant *H. Pople* might pay him the said tithe which had become due since the year 1770; and that the defendant *Powlett* might repay him for all the tithe of seed she had since the said year received from any of the landholders in the parish.

The vicar of *Buckland Newton*, in *Dorsetshire*, is entitled to the tithes of clover seed and other grafs seeds, and to all the tithes of the parish, except the corn, grain, hay, and wood.

(a) See *Lister v. Foy*, vol. 1. page 422.

(b) In Trinity Term, in the twelfth year of *Queen Anne*, *Foy*, a landholder in the tithings of *Brockhampton*, *Duntish*, and *Clinger*, in the parish of *Buckland Newton*, otherwise *Buckland Abbas*, filed a bill in the court of exchequer against

Lister, the vicar of the parish, to establish certain *modus*es in lieu of tithes in kind in the said tithings; but the bill was dismissed, because it was brought by the plaintiff alone to establish *modus*es in the said tithings, whereas the inhabitants therein ought to have been parties.

The

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The dean and chapter of *Wells* said, that they were impropiators of the rectory, and entitled to all tithes whatsoever thereto belonging, and also to the right of presentation to the vicarage ; that the same, before the year 1770, had been in lease to the defendant *Powlett* ; that the vicarage was many years since endowed with some of the tithes arising within the parish ; that the plaintiff was, in 1766, duly presented thereto, and had, by himself and curate, performed the duties thereof ; that the defendant *Powlett* claimed, by virtue of the lease of the said rectory impropriate, to be entitled to the tithes of all clover and grass seeds, as part of the tithes belonging to such rectory ; that she had received such tithes, or some satisfaction for the same, from all or most of the occupiers of lands in the parish ; but that, as they had never received the tithes belonging to the rectory, they could not say whether such kind of tithes belonged to them as rectors, to the defendant *Powlett* as their lessee, or to the plaintiff as vicar ; and that they therefore left the plaintiff to make such proof as he should be able in support of his claim ; but they insisted, that they as rectors, or their lessee, were entitled to such tithes, unless the plaintiff should make out a right thereto in a legal and proper manner.

The defendant *Anne Powlett* denied that the vicar was entitled to all small tithes in the parish ; and insisted, that she was entitled to the tithes of hemp, clover seed, and all other grass seeds, of what nature or kind soever, and whether the tithes thereof were great or small. She admitted, that the rectory was impropriated, and the vicarage endowed ; and insisted, that the impropriator was entitled not only to the tithes of corn, grain, hay, and wood, but also the tithes of hemp and of grass seeds ; and that the vicars had only, from the time of the endowment, received all other small tithes ; and that hemp and grass seeds not being recited in the endowment, he was not entitled thereto. She admitted the receipt of the tithes, as stated in the bill ; and said, that she was not compellable to account until the plaintiff should have fully established his right to the tithes in question.

The defendant *H. Pople* said, that clover and other grass had, for many years past, been permitted to stand for seed in the said parish, and had then been cut and threshed for seed ; that the tithes of all such clover and other grass seeds had been constantly claimed by the lessee of the rectory, as part of the tithes belonging thereto ; and that the tithes thereof had been constantly delivered in kind, or compounded for with the said lessee ; that neither the plaintiff, nor any other vicar of the parish, had ever received any tithe for any such clover or other grass, or any satisfaction for the same, or had ever claimed any such tithe, until the plaintiff thought fit to set up a claim thereto. He set forth an account of the clover and other grass seeds which

which had arisen on the lands in his occupation ; and insisted, that he was not liable to make the plaintiff any satisfaction for the tithe thereof.

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POWLETT.

The plaintiff replied ; the defendants rejoined ; and witnesses were examined on the part of the plaintiff and the defendant *Anne Powlett* only ; and the cause came on to be heard the eighth day of *May* 1783 ; when upon hearing counsel for all parties ; and reading several of the proofs taken in the cause ;

THE COURT deferred giving their judgment herein until the thirteenth of *May* 1783 ; when

THE COURT ordered the bill as against the dean and chapter to be dismissed with costs.

THE COURT further ordered the deputy remembrancer to take an account of what was due to the plaintiff from the defendants *Powlett* and *Pople* for the titheable matters demanded by the bill for *six years* previous to the filing thereof ; that the same be taken as against *Anne Powlett* for the money by her received for the said titheable matters ; and as against *H. Pople* for the titheable matters which had arisen on the ground in his occupation, with costs.

BARTON against IBBERSON.

Middlesex, 22d *May* 1783.

EASTER TERM
23. GEO. 3.

THE rector of *Saint Andrew, Holborn*, in the county of *Middlesex*, state, that his father had, in the year 1734, been duly presented to the said rectory ; that he continued rector thereof until the tenth of *December* 1780, when he died intestate ; that he, the plaintiff, administered to his personal estate ; that he, the plaintiff, was, about *January* 1781, duly presented to the rectory ; that the defendant had, ever since the year 1770, occupied *the Blue Bear Inn*, in *Holborn* ; that he and all former occupiers thereof had been immemorially bound and obliged to pay, and from such time till the interruption hereinafter-mentioned had accordingly from time to time paid to the rector of the said rectory, the sum of five shillings at the end of every quarter of a-year, that is to say, at *Lady Day*, *Midsummer Day*, *Michaelmas Day*, and *Christmas Day* in each year, or as soon after as demanded, in lieu of the tithes of the produce or increase of the ground covered by such messuage or tenement, with the appurtenances, and appropriated to the use thereof, or as a *modus*, composition, or other payment on account thereof, or of the said messuage or tenement, with the appurtenances ; that the defendant had regularly paid the said quarterly payments to the plaintiff's father to *Michaelmas* 1773 ; that he had afterwards withheld the same till his father's death, and had also withheld from

The rector of *St. Andrew's*, in *Holborn*, is entitled to 5^s. 2^d quarter, in lieu of the tithes of *the Blue Bear Inn*, in the said parish.

BARTON
against
JERRISON.

from the plaintiff the said payments which had become due to him as rector since his father's death. The bill therefore prayed an account and payment.

The defendant admitted, that he occupied *the Blue Boar Inn*; but denied the existence of the *modus*; and said, that if he had paid it, it was an imposition upon him, and that he had declined paying it on that account.

The plaintiff replied; the defendant rejoined; and witnesses were examined on the part of the plaintiff only; and upon hearing counsel for the plaintiff; and no counsel appearing for the defendant to open his answer;

THE COURT, upon reading the bill, and an order of court whereby the defendant undertook to appear *gratis*, ordered the deputy remembrancer, to take an account of the quarterly payments which were due to the plaintiff's late father at his death, and to the plaintiff since his father's decease, as demanded by the bill, with costs, unless cause were shewn to the contrary; and no cause being shewn, the decree was, on the twenty-sixth of *June* 1783, made absolute; and on the twenty-fourth of *July* following, the deputy's report was confirmed, with subsequent costs.

EASTER TERM
23. GEO. 3.

BENNETT against PEART.

Lincolnshire, 27th May 1783.

The vicar of
Long Sutton, in
Lincolnshire,
claims the tithes
of all lambs that
are lambed in
the parish;

the tithe agist-
ment of sheep
fed between
Shearing Day
and *Shearing*
Day;

the tithe agist-
ment of all bar-
ren cattle;

3d. at *Easter*,
for every sheep
brought into
and sold out of
the parish un-
shorn;

THE bill stated, that the plaintiff *Bennett* had been, from the year 1775, impropriator of the parish, and patron of the vicarage of *Long Sutton*, in the county of *Lincoln*; that he was entitled to all tithes great and small, except such as belonged to the vicar; that the plaintiff *Greaves* had been, from the said year, vicar thereof; that he, as vicar, was entitled, amongst other things, to the tithes of all lambs that fell in the parish; to the tithe of agistment of all fat or store sheep fed and depastured therein from and after shearing time, and removed out of the parish before the next shearing time; to the tithe of agistment of all bullocks, barren cows, horses and mares used in husbandry business, heifers, colts, and other barren and unprofitable cattle; and to threepence, at *Easter*, for every sheep brought into the parish to feed, and sold or sent out of it without being shorn therein, in the year wherein such sheep were so brought in, in lieu of the tithe of the agistment of such sheep, for the time such sheep were kept or fed in the parish; that on the eighth of *November* 1780, *Greaves* demised to him the said vicarage, with the tithes thereto belonging, except as after-mentioned, to hold for twenty-one years, and thereby assigned to him all arrears of the said agistment tithes and

and of the customary payment of threepence a head for all sheep fold or sent out of the parish without being shorn, and which should be due at the *Lady Day* then next from the occupiers of lands therein, to hold, receive, and take the said arrears for his own use; but that all houses, buildings, gardens, church-yard and surplice fees, were to remain the property of the said *Greaves*; that on the fifth day of *January* 1781, he, by indenture, empowered him to sue for, recover, and receive for his own use, from the occupiers of lands therein, the vicarial tithes and the said customary payment so demised, and to give receipts for the same; that by virtue thereof, he had ever since been entitled to receive for his own use all the said tithes which had arisen from the eighth day of *November* 1780; that the defendants were, before and since *November* 1780, landholders in the parish; that they had had thereon a number of lambs fallen; that they had depastured thereon a number of sheep after shearing-time, and had removed them out of the said parish before the next shearing-time; that they also had thereon a number of bullocks, barren cows, horses, and mares (not used in husbandry business in the said parish), heifers, colts, and other barren and unprofitable cattle; that a number of the sheep so fed had been brought into the parish to feed, and were afterwards, in the same year, sold out of the parish without having been sheared; that the plaintiffs had long since given them notice of the said demise and instrument; that the plaintiff *Bennett* had often applied to them to account with him for the lambs fallen since the eighth of *November* 1780 for the tithe of the agistment of the sheep fed in the years 1780 and 1781 after the shearing-time, and sold out of the parish before the next shearing-time; for the threepence a-head due for the same; and for a tenth part of the value of the agistment of the said several species of cattle before-mentioned; but that they had refused to pay the said tithes, under a pretence that no such *modus* was due. The bill then stated the proceedings in the cause of *Bennett v. Allenby* (a); and charged, that the plaintiff *Bennett* had, soon after the date of the said lease, offered to accept a composition of three shillings an acre for the defendant's inclosed lands, exclusive of the commons, which being very extensive, and rich land, and constantly stocked with a number of sheep and cattle, would reduce it, on the whole, to two shillings and threepence an acre yearly, in lieu of all tithes, great and small; but that the defendants, in order to harass him, had refused to accept the said offer, and, with several other occupiers, had executed a deed, dated the twenty-third of *February* 1781, whereby they agreed to resist all demands that should be made on them by the plaintiff for such tithes. The bill therefore prayed an account and payment of the said tithes.

BENNETT
against
PEARCE.

from the 8th of
November 1780.

(a) Ante.

BENNETT

against

PEART.

The defendant insists, that tithe lambs are payable on the first *Monday* after *May Day* ;

that no agistment tithe is due for sheep fed between shearing day and shearing-day,

that have been shorn in the parish ; the tithe wool being paid in lieu of such tithe ;

that no tithe is of common right due for the agistment of sheep or other cattle on land which has paid tithe of hay the same year ;

that a *modus* of ad. a year, at *Easter*, is payable by landholders, under the names of *hearth silver*, *garden silver*, and *shot and waxing silver*, in lieu of the tithes of garden stuff, fruits, firewood, and the agistment of barren cattle ;

that the 3d. at *Easter* for every sheep sold out of the parish unshorn does not extend to sheep resting therein in their way to market, or to sheep that have been shorn ;

The defendant *Peart* admitted, that the vicar was entitled, by endowment or prescription, to the tithes of all lambs fallen in the said parish ; and insisted, that lambs so dropped are titheable on the first *Monday* after *May Day* ; but he denied, that tithe of agistment of fat or store sheep depastured in the parish from and after shearing time, and removed thereout before the next shearing-time, was due either to the rector or vicar, unless such sheep had not been shorn in the parish ; and insisted, that the tithe of wool of such sheep, or the customary payments in lieu thereof, had been rendered and paid in full of the tithe of such sheep ; and that no tithe of agistment of such sheep was due of common right ; for that it would be unreasonable that tithe wool should be paid for such sheep, and also tithe agistment, especially as, according to the usual course of husbandry, other sheep are brought into the parish in their room with as much growing wool on their backs ; and that therefore the plaintiffs, by receiving agistment tithe for such sheep, would receive double tithe for the same ; but that such claim of agistment tithe of sheep would be particularly unreasonable and ill-founded in cases where such sheep had been depastured on ground which had been mowed for hay, and had paid tithe of such hay ; and he submitted, that of common right no tithe was due for agistment of sheep or cattle agisted on land which had been mowed, and had paid tithe of hay in the same year. He further insisted, that neither the rector or vicar is, or ever was, entitled to the tithe of agistment of all or any bullocks, barren cows, horses, or mares, not used in husbandry business in the parish, or of heifers, colts, or any other barren or unprofitable cattle kept, fed, and depastured therein ; but that on the contrary, by the custom of the parish, there was payable to the vicar a *modus* of twopence, at *Easter* in every year, or after upon reasonable demand, by every person, or at least by every person being an inhabitant in the parish occupying any messuage, cottage, garden, orchard, yard, land, meadow, pasture, or marsh ground therein, by the name or names of *hearth silver*, *garden silver*, and *shot and waxing silver*, in lieu of all tithes of herbs, flowers, roots, apples, pears, plumbs, nuts, and other fruits, in or upon any gardens, orchards, or yards in the parish, yearly growing, arising, and increasing, and of all wood, cuttings, croppings, and toppings of trees cut in such year, and also of herbage and agistment of all barren and unprofitable cattle whatever, kept, fed, and depastured within the said parish in such year. The defendant admitted the custom to pay threepence a head to the vicar for every sheep brought into the parish, and kept therein, and sold or sent out of it without having been shorn therein, as a *modus*, in lieu of the tithe of agistment of such sheep, for the time such sheep had been so kept or fed in the parish, excepting that no payment had ever been made :

in lieu of tithe of agistment of sheep brought into the parish, and fed and depastured therein for one or two nights only, in their way or passage through the parish from some other place to some other place in the usual course of business for the supply of markets or otherwise, and except that such *modus* of three-pence a head extended to all sheep sold out of the parish between *Candlemas* and *shearing time* with the wool on their backs, whether brought into the said parish after shearing time in the preceding year, or shorn in the parish in the preceding year, or bred therein and shorn. He admitted, that he occupied the lands in the parish as mentioned in his answer; and said, that he had paid the tithes for the same up to *Lady Day* 1781: and set forth his titheable matters.

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against
PEARL.

The defendant *Taylor* and others answered in like manner.

The defendants *J. Mathew* and *S. Hix* said, that they had not been resident in the parish since the tenth day of *November* 1780; and that by the custom thereof, persons occupying lands, but not residing therein, had always paid eightpence an acre yearly, in lieu of all tithes, except the tithe of corn, which was paid in kind; but that if such customary payment of eightpence an acre were not due, they were entitled to the benefit of the several other customary payments in lieu of tithes as made by persons resident in the parish; and they admitted, that they had lambs fallen on their lands, and that they had taken the same away without setting out the tithe thereof.

that out-dwellers occupying lands in the parish pay only 8d. an acre yearly, in lieu of all tithes, except of corn;

The defendants *R. Taylor*, *B. Taylor*, and *T. Harbor*, residents in the parish, said, that a payment of three shillings for every tenth lamb in *Sutton Saint Mary's* and *Sutton Saint Nicholas*, and two shillings and sixpence for every tenth lamb in *Sutton Saint James* and *Sutton Saint Edmunds* had, by the custom of the parish, been accepted in lieu of the tithe thereof.

that residents in *Sutton Saint Mary* and *Sutton Saint Nicholas* pay 3s. in lieu of every tithe lamb;

and 2s. 6d. in *Sutton Saint James* and *Sutton Saint Edmunds*;

The defendants *Hicks* and *Mathews* out-owners, and the defendant *R. Taylor* resident in *Sutton Saint Mary's*, said, that they were ready to pay three shillings for every tenth lamb; and *B. Taylor* and *T. Harbor*, resident in *Sutton Saint Edmunds*, said, that they were ready to pay two shillings and sixpence for every tenth lamb. They severally, except *Hicks*, admitted, that they had depastured sheep after shearing, and had sent them away before the next shearing; and that they had also depastured barren cattle on their lands. They also stated an account of the stock which they had; and insisted on the same defence in bar of the plaintiff's demand as had been insisted on by the defendant *Pearl*.

The other defendants answer in like manner.

The defendants *Mathews* and *Hicks* said, that they were not residents in the parish, and were ready to pay eightpence an acre in

BENNETT
against
PEART.

in lieu of all tithes, except of corn ; and that they had paid the same to the plaintiff *Bennett*.

The cause
heard.

Objection to
evidence over-
ruled.

The plaintiffs replied ; the defendants rejoined ; and witnesses were examined only on the part of the defendants ; and upon hearing counsel several days on the part of the plaintiffs and defendants ; and reading, for the plaintiffs the answer of the defendant *Peart* and of the other defendants ; the bill ; the several depositions taken on the part of the defendants ; a lease from *Greaves* to *Bennett* of the vicarial tithes of the parish of *Sutton*, dated the eighth of *November* 1780 ; the record of THE POSTEA on the trial of an issue heretofore directed by this court in the cause of *Bennett v. Allenby* ; a decree made in that cause, dated the thirtieth of *June* 1778 ; and upon reading, on behalf of the defendants, the answer of *Richard Taylor* and others, and it being objected by the counsel for the plaintiffs that the evidence touching the tithe of lambs was not warranted by the allegations in the answer, and the objection being over-ruled by the Court ; and on reading the answer of the defendant *Greaves* in the said cause of *Bennett v. Allenby* ; the depositions taken in this cause ; the answer of the defendant *Greaves* in a cause in this court, *Bennett v. Wallett* ; an order, dated the twenty-first of *May* instant, to read proceedings in THE DUCHY COURT OF LANCASTER, viz. the information, answer, and depositions in a cause in the duchy court of *Lancaster*, the *Attorney General*, at the relation of *Sir Oliver Butler, Knight*, informant, against *Clarke*, clerk, and another ; a decretal order therein, dated the eleventh of *February*, in the first year of *Charles the First* ; the twenty-fourth of *May* 1708, the original terrier of the parish of *Sutton*, from the *Bishop of Lincoln's* office, BUGDEN ; *Trinity Term*, in the eighth year of *George the Third*, office copy of a judgment obtained in his majesty's court of common pleas, *Mathew and Others*, plaintiffs, v. *Greaves*, clerk, defendant ; *Trinity Term*, in the sixteenth year of *George the Third*, bill, answers, depositions, and proceedings in the cause of *Bennett v. Allenby* ; certificate of the burials of *John Pike* and several others, witnesses examined in the said cause on behalf of the defendants ; *Hilary Term*, in the eighteenth year of *George the Third*, bill and answer in this court, *Bennett v. Wallett and Others* ; a libel admitted on the behalf of the said *William Greaves*, clerk, in the consistory court of the archdeacon of *Lincoln*, against *Richard Oxtaby*, together with the answer of the said defendant thereto, and the acts of the said consistory court upon the acceptance of the tender made therein ; a receipt or discharge from *George Tomlin*, agent to the plaintiff, to the plaintiff *William Greaves*, clerk, for all tithes due from the defendant *J. Peart* up to *Lady Day* 1781 ; and on full debate of the matter ;

THE

THE COURT ordered the following issues, viz.

BENNETT
against
PEARCE.

FIRST, "Whether, by ancient custom used within the parish of Sutton, for time whereof the memory of man is not to the contrary, there was and is due and payable, and ought to be rendered and paid to, and accepted by the vicar of the said parish for the time being; an ancient *modus* or customary payment of the sum of twopence, on the feast of *Easter* in every year, or after on reasonable demand, by every person, or at least by every person being an inhabitant within the parish, occupying any messuage, cottage, garden, orchard, yard, meadow, pasture, or marsh grounds, within the said parish and the titheable places thereof, by the name or names of *hearth silver*, *garden silver*, and *shot and waxing silver*, in lieu and satisfaction of all and singular the tithes of herbs, flowers, roots, apples, pears, plumbs, nuts, and other fruits, in or upon any gardens, orchards, or yards within the said parish, yearly growing, arising, or increasing, and of all wood cuttings, croppings and loppings of trees cut in such year; AND ALSO of herbage and agistment of all barren and unprofitable cattle whatever kept, fed, and depastured in the said parish and the titheable places thereof in such year."

1st, Whether 2d. are payable at *Easter*, under the names of *hearth silver*, *garden silver*, and *shot and waxing silver*, as a *modus*, in lieu of garden stuff, fruits, firewood, and the agistment of barren cattle, in the parish of Sutton.

SECONDLY, "Whether, by ancient custom used within the parish, for time whereof the memory of man is not to the contrary, persons occupying lands within the said parish, and living or residing out of the said parish, have always paid, and that there is, and had always been, due and payable from such persons to the rector of the said parish, the sum of eightpence for every acre of land occupied by them within the said parish, in lieu and satisfaction of all tithes arising from such lands in one year (except the tithe of corn)."

2dly, Whether 8d. an acre are payable yearly by *out-dwellers*, in lieu of all tithes, except of corn.

To be tried by a special jury; the defendants to be plaintiffs at law; and the judge at liberty to indorse, &c.

The said issues were tried; and the jury found all the issues in the negative; and instead of

The issues found against the *moduses*.

THE FIRST ISSUE the jury found the following *modus*, viz. "That by ancient custom used within the parish of Long Sutton, otherwise Sutton in Holland, in the county aforesaid, for time whereof the memory of man is not to the contrary, there was and is due and payable, and ought to be rendered and paid to, and accepted by, the vicar of the same parish for the time being, an ancient *modus* or customary payment of the sum of twopence, on the feast of *Easter*, in every year, or after upon reasonable demand, by every person being an householder

But the jury say, that there is a *modus* of 2d payable at *Easter*, by the names of *hearth silver*, *garden silver*, and *shot and waxing silver*, in lieu of fruits, garden stuff, firewood, and agistment of barren cattle, in the township of Long Sutton.

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against
PEART.

“ inhabitant within the said parish occupying any messuage,
“ cottage, garden, orchard, yard, land, and meadow, pasture, or
“ marsh ground, within the same parish and the titheable places
“ thereof, by the name or names of *hearth silver, garden silver,*
“ and *shot and waxing silver,* in lieu and satisfaction of all and
“ singular the tithes of herbs, flowers, roots, apples, pears,
“ plumbs, nuts, and other fruits, in or upon any gardens, or-
“ chards, or yards within the same parish, yearly growing, arising,
“ or increasing, and of all wood-cuttings, croppings, and toppings
“ of trees cut in such year, and also of herbage and agistment of
“ all barren and unprofitable cattle whatever kept, fed, and
“ depastured in the same parish, or the titheable places thereof,
“ in such year.”

The Court of o-
pinion, that the
modus, as found,
is void for un-
certainty.

The plaintiff's counsel prayed, in respect of the uncertainty of the said *modus* of twopence so found by the jurors, that an account might be directed to be taken of the several titheable matters and things demanded by the bill; and on reading the decree and *postea*, the answer of the defendant *Peart*, and hearing counsel on both sides for two days, the judgment of the court was postponed being given till this day.

The defendants
decreed to pay
the temporary
compositions in lieu
of tithe lambs;

THE COURT ordered the deputy remembrancer to take an account of what was due to *Bennett* from *R. Taylor, B. Taylor,* and *T. Harbour*, for the several *temporary compositions* payable by them respectively for the tithes of all lambs yeaned upon the lands in their respective occupations in manner following, *viz.* three shillings a lamb in *Sutton Saint Mary's* and *Sutton Saint Nicholas*, and two shillings and sixpence a lamb in *Sutton Saint James* and *Sutton Saint Edmunds*, to be computed from the eighth day of *November 1780*.

and the agist-
ment tithe of all
barren and un-
profitable cattle,
but without pre-
judice to the
question on this
part of the
cause;

THE COURT further ordered an account to be taken of what was due to *Bennett* from *J. Peart, R. Taylor, B. Taylor,* and *T. Harbour*, for the tithe of agistment of all bullocks, horses, and mares not used in husbandry business; and also of all barren cows, heifers, colts, and other barren and unprofitable cattle kept, fed, and depastured by the said defendants in the said parish, in manner and from the time demanded by the said plaintiff *Bennett* in his said bill; but *without prejudice* to any claim of exemption which the said defendants, or any of them, in any future cause may be advised to insist on.

the agistment
tithe of all sheep
depastured from
Shearing Day to
Candlemas Day;

THE COURT further ordered an account, from the time demanded by the bill, of what was due to *Bennett* from the said last defendants for the tithe of agistment of all sheep bred or shorn by them respectively in the parish, and which were by them kept, fed, and depastured therein after shearing time, and that were not fed and depastured therein after *Candlemas* in the succeeding year.

THE

THE COURT further ordered an account from the like time of what was due to *Bennett* from the aforesaid four defendants, at and after the rate of threepence a head for all such sheep as were brought by them respectively into the said parish in any one year after *Candlemas*, and which were kept, fed, and depastured therein, and afterwards sent or sold out of the said parish in the same year without having been shorn therein.

BENNETT

against

PEARCE.

3d. a head for all sheep brought in after *Candlemas Day*, and sold out unshorn before the ensuing *Shearing Day*;

THE COURT further ordered an account from the like time of what was due to *Bennett* from the aforesaid four defendants, at and after the rate of threepence a head for all such sheep as had been shorn by them respectively in the parish, and which had continued therein upon their respective lands or grounds until after *Candlemas* and before *Shearing Day*, whether such sheep had been brought into the said parish in that year, or shorn therein the year preceding, or bred in the said parish in such preceding year and not shorn therein.

3d. a head for all sheep shorn in the parish, and depastured therein until after *Candlemas Day*;

THE COURT further ordered an account of what was due to *Bennett* from the defendants *J. Mathews* and *S. Hicks*, for and in respect of the several titheable matters in kind which had arisen upon their respective farms and lands from the time demanded by the bill.

tithes in kind by the out-dwellers;

THE COURT further ordered the defendants to pay to *Bennett* his costs of the trial of the issues; but in respect to the costs sustained by the parties in equity, the Court was of opinion, that no costs should be given on either side.

and the costs at law, but not in equity.

THE COURT also decreed the word *grafs* mentioned in the second issue, it having been inserted therein by mistake, to be expunged.

The word *grafs* to be expunged from the second issue.

And the same orders were made upon another bill and answers precisely similar to the above in the cause of *Bennett v. Mewburn*.

The like decree in the cause of *Bennett v. Mewburn*.

OGLE against LORD GOWER.

Shropshire, 30th May 1783.

EASTER TERM

23. GEO. 3.

THE vicar of *Lilleball*, in the county of *Salop*, claimed the tithes in kind of hay and hay-grass yearly arising in the townships of *Lilleball*, *Hunnington*, and *Dunnington*, and the tithes in kind of all lambs, calves, chickens, pigs, geese, eggs, milk, wool, hemp, and flax, orchards, gardens, crofts dug with the foot, and all other small tithes throughout the parish; and stated, that all the defendants, except *Lord Gower*, had, since *Lilleball*, *Hunnington*, and *Dunnington*; and to the tithes of corn and grain on *Shelton Farm*, in kind.

The vicar of *Lilleball*, in *Shropshire*, is entitled to the small tithes of the parish; to the tithes of hay and hay grass in the township of *Shelton Farm*, in

R 2

Midsummer

OGLE
against
LORD
GOWER

Midsummer Day 1779 occupied lands therein, the tithe hay and the small tithes of which they had refused to pay; that he was, as vicar, entitled to the tithes of corn and grain in kind, yearly arising on lands in the separate holding of the defendant *Wedge*; that she had promised, by parol, to pay him a yearly rent of eight pounds in lieu thereof; that she had paid the same accordingly to the end of the year 1775, but had since refused to pay the same; that the defendant *Lord Gower*, as *lay impropriator*, claimed to be entitled to all tithes of corn, grain, and hay within the parish, and particularly to the species of tithes upon the lands in the occupation of the defendants. The bill therefore prayed, that the defendants might answer the premises, and set forth the farms and lands to which they pretended the *modus* of twenty-one pounds, ten shillings, extended; that the plaintiff's right to the said tithes might be established; and that all the defendants might account for the said tithes, and pay what should be due on such account.

The defendant *Lord Gower* denied, that the vicar was any-ways entitled to any tithes in kind of hay, corn, and grain, from the lands in the occupation of the other defendants.

The defendants *Freeman* and *Taylor* denied, that he was entitled to any tithes of hay, or of corn and grain, arising in the parish; for that the parish consisted of divers farms, which had been parcel of *the Demesne Lands* of the *abbey of Lilleball*, one of the greater monasteries dissolved by *Henry the Eighth*, and thereby vested in the crown; that the abbey, and *the Demesne Lands* thereof, were afterwards granted by the crown to the ancestors of *Lord Gower*; and that the same were, by some lawful means, vested in *the Earl*; that the several farms they occupied, the titheable matters of which they set forth, were parcel of *the Demesne Lands* of the said abbey; that the same were at and before its dissolution in the hands of the abbot and convent thereof freed and discharged from the payment of all tithes and dues whatsoever; and that the same had ever since been, and still continued to be, so exempt and discharged; that no tithes in kind, or any satisfaction for the same, had ever been taken by the vicar in respect thereof; and that the same were by the means aforesaid, or otherwise, exempted and discharged from the payment of all tithes and dues whatsoever.

The defendants *Spearman*, *Penfon*, *Barber*, and *Willgoose*, denied the vicar's title to the tithes of hay, corn, and grain, arising in the said parish, for the same reasons as before stated; and further insisted, that *the Earl* was the *lay impropriator* of the parish, and entitled to all the tithes of corn, grain, and hay, arising therein; and that there then was, and from time whereof the memory of man was not to the contrary had been, an ancient and laudable custom within the said parish, that the owners and occupiers of the

the several ancient farms in the said parish, not being parcel of the *Demesnes* (whereof part of the said farms in the defendant's occupation were parcel), having small tithes, should pay, and they had always yearly paid, to the said vicar, twenty-one pounds, ten shillings, as a *modus*, and in satisfaction of all the vicarial tithes and dues arising from all the lands, not demesne, within the said parish; and that the same had been accepted accordingly.

Obie
against
Lord
Gower.

The defendants *B. Hector, E. Hector, S. Howle*, and *E. Wedgeley*, said to the same effect, and set up the like defence.

The plaintiff replied; the defendants rejoined; and divers witnesses were examined on both sides; and the cause came on to be heard on the twenty-seventh day of *January 1783*; when upon hearing counsel for all parties; and reading, on behalf of the plaintiff, several depositions of witnesses; a register book of the *Bishop of Litchfield and Coventry*, containing an entry or transcript of the endowment of the vicarage of *Lilleball*, entitled, "*Dotatio Vicariæ de Lilleball*;" a roll from the said registry, entitled, "*Computus Fratris Johans Wenlocke, Theasurar. Dom. de Lilleball redditus Recept.*" from *Michaelmas* in the sixth year to *Michaelmas* in the seventh year of *Henry the Sixth*, containing, amongst other things, the following, "*Item, Lilleball*" "*Idem Mocluston et de 5s. 2½d. de feno decimale ibidem ad Terminum*" "*Mich. Sancti*;" another ancient roll, from the said registry, entitled, "*Comp. Fratris Thoma Hull de Off. Theasurar. Dom. de*" "*Lilleball, redditus Recept.*" from *Michaelmas* in the fifteenth year of *Henry the Sixth* to the *Michaelmas* following, containing the following, "*Item, Mocluston fenum decimale et de 5s. 2d. red.*" "*de feno decimale de Mocluston ad Sancti Mich. tantum*;" a bull of *Pope Innocent the Fourth*, in the chapter-house at *Westminster*, authorizing a taxation to be made of all ecclesiastical preferments in *England*; another bull of the same pope, in the said chapter-house, so directing the bishops of *Lincoln* and *Winchester* to superintend that taxation; an examined copy from the record in the *Tower*, entitled, "*Taxatio Nicholaij Papa Quarti, A. D.*" "*1296*," containing the following item, "*Archidiaconatus,*" "*Salop Ecclesiæ de Lilleball Septem. Mark*;" copy of the ecclesiastical survey taken in the twenty-sixth year of *Henry the Eighth*, from the office of the first fruits, as follows, "*Salop*" "*Decanatus Novi Burgi Lilleball Vicaria, Valet in Gros communibus*" "*Annis, 7l.*;" the proceedings from the spiritual court of the *Bishop of Litchfield and Coventry*, in a suit therein instituted for subtraction of tithes, between *T. Millington*, clerk, vicar of *Lilleball*, and *John Cartwright*, of *Lilleball* aforesaid, in 1617; and several exhibits; and the decretal sentence and other proceedings in the same cause; and reading the notices of the plaintiff to the defendants to set out their tithes; and the ministers accounts, from the augmentation office, of the abbey

Ogle
against
LORD
GOWER,

of *Lilleball* ; a lease from *Henry the Eighth* to *William Cavendish, Esquire*, in the said augmentation office, of *the Demesnes* of the said abbey ; the answer of the defendants *Hectors* and *Howle* ; the cause was adjourned over to the sittings of the court after the said *Hilary Term*, upon a proposal of accommodation, when it was further adjourned by consent of all parties ; and upon hearing counsel further for the defendants ; and reading the articles of agreement duly executed by all parties, dated the eighth day of *February 1783* ; and the award made thereupon by *John Briscoe* and *Richard Hill*, being duly sealed and delivered by them the twenty-first day of *March* last, and fully set forth in this decree ; the cause came on this day to be further heard ; when upon hearing counsel further on both sides ; and reading the said agreement and award ;

THE COURT ordered, by consent of all parties, the award to be made a decree of the court ; and that the deputy take an account on the foot thereof of what was due from *Taylor* and *Wedge* in respect of the several small tithes which had arisen from the respective farms from *June 1779*.

The counsel for the *Earl of Gower* and the defendant *Wedge* admitted, that the plaintiff and his successors, vicars of *Lilleball*, are entitled to the tithes of corn and grain arising upon a certain farm in the occupation of *Wedge*, and called *Shelton's Farm*.

THE COURT further ordered an account to be taken of what was due from *Wedge* for the tithes of corn and grain which had arisen upon the said farm from *June 1779*.

THE COURT further ordered the deputy to take an account of what was due from *Earl Gower, &c.* for and in respect of the small tithes which had arisen upon the lands in their respective occupations from the commencement of this suit ; and that the said defendants do respectively pay to the plaintiff what shall appear to be due to him on the said accounts.

SKYNNER, Chief Baron.
EYRE, Baron.
PERRY, Baron.

TRIN. TERM,
23. GEO. 3.

SCOTT against FENWICK.

Northumberland, 30th June 1783.

The rector of *Simonburne*, in *Northumberland*, claims the tithes of cows, milk, and agistment of barren cattle, in the chapelry of *Bellingham*.—See *Scott v. Coulson*, ante.

THE rector of *Simonburne*, in the county of *Northumberland*, claimed the tithes in kind of corn, grain, hay, and other great tithes ; the tithes of milk, herbage, agistment of barren and unprofitable cattle, lambs, wool, turnips, potatoes, and other small tithes, yearly arising therein, particularly upon *Breaty*

Farm, Bridgeford Farm, Highfield, and other lands in the chapelry of Bellingham.

SCOTT
against

FENWICK.

The defendants by their joint and several answers insisted, that by the custom of the parish the occupiers of messuages, farms, lands, or grounds within and throughout the said rectory and parish, or the titheable places thereof, including the chapelry of *Bellingham*, had always been used or accustomed to pay, to or for the use of the rectors of the said rectory for the time being, or their lessees or farmers, certain yearly sums of money for or in lieu or full satisfaction of the tithe of the milk produced from the cows annually kept, fed, or depastured by such occupiers respectively upon their several and respective farms or tenements, lands or grounds within the said parish, THAT IS TO SAY, for each of such cows not producing a calf in the same year, commonly called a *farrow cow*, the sum of three halfpence; and for each of such cows producing a calf in the same year, commonly called a *new keld cow*, in case the calves dropped or produced from all the *new keld cows* belonging to or kept, fed, and depastured by any such occupier do not in the year amount in number to five or more, the sum of twopence; and if to five or more, the sum of three halfpence only; which sums of money, during all the said time, had been and were payable on *Easter Monday* in each year, or as soon after as demanded, for and in lieu and full satisfaction of the tithe of milk produced from such farrow cows and new keld cows respectively, according to the several and respective cases and events aforesaid; that they had paid the said *modus*es to the year 1771, when the plaintiff became rector of the parish, and had since offered to pay him the same, but which he had refused to accept. They also insisted, that the tithes of calves were not payable in the parish according to the common course of paying tithes of calves; but that, by the custom of the parish, the rector was entitled to half a calf in case the number of calves dropped in one year belonging to any one person amounted to five, or the value thereof; and one calf, in case the number of calves dropped in one year belonging to any one person amounted to six or more, for and in lieu of the tithes of such calves. They further insisted on the statute of limitations. They also insisted, that the several occupiers of messuages, farms, lands, and grounds, within and throughout the chapelry of *Bellingham* and the titheable places thereof, had immemorially been used or accustomed to pay to or for the use of the rector of the said rectory for the time being, or to his lessee or farmer, the sum of fourpence for each score or twenty lambs taken in to depasture, or permitted or suffered by any occupier of lands and grounds within the said chapelry of *Bellingham* and the titheable places thereof to depasture for the summering or spaining thereof as aforesaid, for the time aforesaid, or for the usual time deemed proper for that purpose, which had not been dropped or produced within the said parish or the titheable places thereof in the same year, or kept

The defendants insist on a *modus* of 1½d. a farrow cow, and 2d. a new keld cow if not above five; and if above that number, then 1½d. a cow, in lieu of the tithe milk of such cows.

a *modus* of half a calf in every five or six calves;

a *modus* of 4d. for every twenty lambs, in lieu of the tithes of summering or spaining the said lambs;

OGLE
against
LORD
GOWER,

of *Lilleball*; a lease from *Henry the Eighth* to *William Cavendish, Esquire*, in the said augmentation office, of *the Demesnes* of the said abbey; the answer of the defendants *Hectors* and *Howle*; the cause was adjourned over to the sittings of the court after the said *Hilary Term*, upon a proposal of accommodation, when it was further adjourned by consent of all parties; and upon hearing counsel further for the defendants; and reading the articles of agreement duly executed by all parties, dated the eighth day of *February 1783*; and the award made thereupon by *John Briscoe* and *Richard Hill*, being duly sealed and delivered by them the twenty-first day of *March* last, and fully set forth in this decree; the cause came on this day to be further heard; when upon hearing counsel further on both sides; and reading the said agreement and award;

THE COURT ordered, by consent of all parties, the award to be made a decree of the court; and that the deputy take an account on the foot thereof of what was due from *Taylor* and *Wedge* in respect of the several small tithes which had arisen from the respective farms from *June 1779*.

The counsel for the *Earl of Gower* and the defendant *Wedge* admitted, that the plaintiff and his successors, vicars of *Lilleball*, are entitled to the tithes of corn and grain arising upon a certain farm in the occupation of *Wedge*, and called *Shelton's Farm*.

THE COURT further ordered an account to be taken of what was due from *Wedge* for the tithes of corn and grain which had arisen upon the said farm from *June 1779*.

THE COURT further ordered the deputy to take an account of what was due from *Earl Gower, &c.* for and in respect of the small tithes which had arisen upon the lands in their respective occupations from the commencement of this suit; and that the said defendants do respectively pay to the plaintiff what shall appear to be due to him on the said accounts.

SKYNNER, Chief Baron.
EYRE, Baron.
PERRYN, Baron.

TRIN. TERM,
23. GEO. 3.

SCOTT against FENWICK.

Northumberland, 30th June 1783.

The rector of *Simonburne*, in *Northumberland*, claims the tithes of cows, milk, and agistment of barren cattle, in the chapelry of *Bellingham*.—See *Scott v. Coulson*, ante.

THE rector of *Simonburne*, in the county of *Northumberland*, claimed the tithes in kind of corn, grain, hay, and other great tithes; the tithes of milk, herbage, agistment of barren and unprofitable cattle, lambs, wool, turnips, potatoes, and other small tithes, yearly arising therein, particularly upon *Brearysb*

Farm, Bridgeford Farm, Highfield, and other lands in the chapelry of Bellingham.

SCOTT
against

FENWICK.

The defendants by their joint and several answers insisted, that by the custom of the parish the occupiers of messuages, farms, lands, or grounds within and throughout the said rectory and parish, or the titheable places thereof, including the chapelry of *Bellingham*, had always been used or accustomed to pay, to or for the use of the rectors of the said rectory for the time being, or their lessees or farmers, certain yearly sums of money for or in lieu or full satisfaction of the tithe of the milk produced from the cows annually kept, fed, or depastured by such occupiers respectively upon their several and respective farms or tenements, lands or grounds within the said parish, THAT IS TO SAY, for each of such cows not producing a calf in the same year, commonly called a *farrow cow*, the sum of three halfpence; and for each of such cows producing a calf in the same year, commonly called a *new keld cow*, in case the calves dropped or produced from all the *new keld cows* belonging to or kept, fed, and depastured by any such occupier do not in the year amount in number to five or more, the sum of twopence; and if to five or more, the sum of three halfpence only; which sums of money, during all the said time, had been and were payable on *Easter Monday* in each year, or as soon after as demanded, for and in lieu and full satisfaction of the tithe of milk produced from such farrow cows and new keld cows respectively, according to the several and respective cases and events aforesaid; that they had paid the said *modus*es to the year 1771, when the plaintiff became rector of the parish, and had since offered to pay him the same, but which he had refused to accept. They also insisted, that the tithes of calves were not payable in the parish according to the common course of paying tithes of calves; but that, by the custom of the parish, the rector was entitled to half a calf in case the number of calves dropped in one year belonging to any one person amounted to five, or the value thereof; and one calf, in case the number of calves dropped in one year belonging to any one person amounted to six or more, for and in lieu of the tithes of such calves. They further insisted on the statute of limitations. They also insisted, that the several occupiers of messuages, farms, lands, and grounds, within and throughout the chapelry of *Bellingham* and the titheable places thereof, had immemorially been used or accustomed to pay to or for the use of the rector of the said rectory for the time being, or to his lessee or farmer, the sum of fourpence for each score or twenty lambs taken in to depasture, or permitted or suffered by any occupier of lands and grounds within the said chapelry of *Bellingham* and the titheable places thereof to depasture for the summering or spaining thereof as aforesaid, for the time aforesaid, or for the usual time deemed proper for that purpose, which had not been dropped or produced within the said parish or the titheable places thereof in the same year, or kept

The defendants insist on a *modus* of 1½d. a farrow cow, and 2d. a new keld cow if not above five; and if above that number, then 1½d. a cow, in lieu of the tithe milk of such cows.

a *modus* of half a calf in every five or six calves;

a *modus* of 4d. for every twenty lambs, in lieu of the tithes of summering or spaining the said lambs;

Scott
against
FINWICK.

a *modus* of rd.
a-year, in lieu of
the tithe grafs of
every ancient
tenement.

and depastured within and upon the lands and grounds within the said parish or the titheable places thereof, until the first day of *January* then next, so as to entitle the rector for the time being to tithe lamb or wool in kind for or on account of such lambs, according to the ancient custom which, from time whereof the memory of man was not to the contrary, had been used or approved within the said rectory and parish, and the titheable places thereof, respecting tithe lamb and tithe wool such rector would have been entitled to in case such lambs had been dropped or lambled within the said parish or rectory, or the titheable places thereof, or kept and depastured therein until the first day of *January* then next after, and not for the tithe of grafs or herbage which such lambs might eat or consume in and during the time aforesaid. They also insisted, that a *modus* of one penny had been yearly paid by the occupiers of every *ancient tenement* or farm within the said chapelry, and throughout the said parish and rectory, in lieu of all grafs yearly arising within or upon the same, whether the same was eaten and consumed by the mouth of cattle, sheep, or any other living goods of any sort, or cut, cured, or made into hay. They further insisted, that no more than the said one penny had ever been paid for such grafs; and that the *modus* of fourpence for each score of lambs taken to summer or spaine was actually paid according to and by the custom respecting tithe lambs and wool, and absolutely governed thereby, and not on account of the grafs they might eat or consume.

The cause
heard.

The plaintiff replied; the defendants rejoined; and several witnesses were examined on both sides; and upon hearing counsel for the plaintiff; and reading an affidavit of *subpœna* to hear judgment upon all the defendants;

The defendants,
not appearing,
are decreed to
pay the tithes
of milk, and of
the agistment of
barren cattle, in
kind, unless they
shew cause to the contrary.

THE COURT decreed the defendants to pay the tithes in kind of the milk, and the agistment of dry, barren, and unprofitable cattle kept upon their respective ancient inclosed farms called *Emmel Haugh*, and *Midgeholme*, the *Comb*, and *Highfield*, and *Simonburne*, for the time demanded by the bill, unless cause be shewn to the contrary.

They pay costs,
and shew cause.

The defendants paid the five pounds, costs of the day; and the cause came on to be heard the twentieth day of *November* 1784 and several other days: when upon hearing counsel for all parties; and reading the several answers and the proofs; and hearing the plaintiff's counsel in reply on the third day of *May* last; it was ordered to stand over for the judgment of the Court till this day, when the same was given.

THE

THE COURT ordered the bill, so far as it respected the demand of the tithes of milk, to be dismissed, but without costs; the deputy to take an account of what was due for the tithes of agistment of all such dry, barren, and unprofitable cattle as had been kept and depastured by them respectively upon their respective ancient inclosed farms called *Emmet Haugh*, and *Midgeholme, the Comb*, and *Highfield*, in the district of *Bellingham*, for the several years demanded by the bill, or such of them as they admitted to have had such titheable matters; and also an account of what was due for such dry, barren, and unprofitable cattle as had been kept upon their respective *newly-inclosed farms* and lands in the district of *Simonburne*, from the time demanded by the bill.

The bill as to the tithe of milk dismissed; and the tithes of the agistment of barren cattle on *Emmet Haugh*, *Midgeholme, the Comb*, and *Highfield*, in the chapelry of *Bellingham*, and also in the district of *Simonburne*, decreed.

WOLLACOMBE *against* MAY.

TRIN. TERM,
23. GEO. 3.

Devonshire, 30th June 1783.

THE plaintiffs, on behalf of themselves and the owners and occupiers of messuages or tenements and lands in the parish of *Roborough*, in the county of *Devon*, particularly the owners of the lands called *Broad Wansley*, *Billhill*, *Ebberley*, *Frenches*, and *West Lugworthy*, filed their bill to establish divers ancient customs within the said parish against the rector thereof.

The rector of *Roborough*, in *Devonshire*, is only entitled to certain *modus* in lieu of the tithes of milk, calves, garden stuff, ewes, odd lambs, odd fleeces of wool, colts, hay, firewood, marriages, and churchings of women.

The rector denied the existence of the *modus*.

THE COURT directed the following issues:

FIRST, "Whether, from time whereof the memory of man is not to the contrary, the owners and occupiers of messuages or tenements and lands lying within the parish of *Roborough*, in the county of *Devon*, have paid, and of right ought to pay, yearly and every year, at the feast of *Easter*, or so soon after as the same was or should be demanded, to and for the use of the rector of the said parish of *Roborough* for the time being, or his lessee, the sum of one penny for every milch cow kept, fed, and depastured on their respective messuages or tenements and lands, within the said parish, as a *modus* for and in lieu of and satisfaction for the tithe of milk of such cow."

SECONDLY, "Whether, from time whereof the memory of man, &c. have paid, and of right ought to pay, the sum of fourpence for every calf calved on their respective messuages, &c. as a *modus* for and in lieu, &c. of such calf."

THIRDLY, "Whether, from time whereof the memory of man, &c. have paid, &c. the sum of one penny, called a *garden penny*, for all gardens and the fruits thereof, for every tenement within the said parish, as a *modus* for and in lieu of
" and

WOLLACOMBE
against
MAY.

“ and satisfaction for the tithes of such gardens and the fruits thereof.”

FOURTHLY, “ Whether, from time whereof the memory of man, &c. have paid, &c. the sum of one farthing for every ewe sheep milked on their respective messuages, &c. as a *modus* for and in lieu of and full satisfaction for the tithe of the milk of such ewe sheep.”

FIFTHLY, “ Whether, from time whereof the memory of man, &c. the owners, &c. have paid, &c. the sum of two-pence for every odd lamb fallen on their respective messuages, &c. as a *modus* for and in lieu, &c. for the tithe of every such lamb.”

SIXTHLY, “ Whether, from time whereof the memory of man, &c. the owners, &c. have paid, &c. the sum of two-pence for every odd fleece of wool shorn on their respective messuages, &c. as a *modus* for and in lieu, &c. for the tithe of every such fleece of wool.”

SEVENTHLY, “ Whether, from time whereof the memory of man, &c. the owners, &c. have paid, &c. the sum of three-pence for every colt foaled on their respective messuages, &c. as a *modus* for and in lieu, &c. for the tithe of every such colt.”

EIGHTHLY, “ Whether, from time whereof the memory of man, &c. the owners, &c. have paid, &c. the sum of one penny for every acre of grafs mowed or cut, and made or converted into hay on their respective messuages, &c. as a *modus* for and in lieu, &c. for the tithe hay of every such acre of grafs.”

NINTHLY, “ Whether, from time whereof the memory of man, &c. the owners, &c. have paid, &c. the sum of one penny, called an *hearth penny*, as a *modus* for and in lieu of and satisfaction for the tithe of all fire wood cut down on their respective messuages and lands within the said parish, and consumed thereon or sold, except such fire wood as had been or should be cut down and sold in and from the ancient sale woods thereon growing.”

TENTHLY, “ Whether there have been immemorially due and payable, and paid to the rector of the said parish for the time being, the sum of fourpence, and no more, as a customary due and payment for every marriage solemnized within the said parish-church by the inhabitants of the parish.”

ELEVENTHLY, “ Whether there has been immemorially due and payable, and paid to the rector of the said parish for the time being, the sum of fourpence, and no more, as a customary
“ due

“due and payment for the churcing of every woman an inhabitant of the said parish.”

WOLLACOMBE
against
MAY.

The plaintiffs in equity to be plaintiffs at law.

By an order, dated the eighth of *May* 1784, the defendant was to shew cause why the several issues should not be taken *pro confesso*; and on the sixteenth of *June* 1784, the said order was made absolute; and on the twenty-third of *November* 1784, the cause came on for further directions; when upon hearing counsel for the plaintiffs and defendant; and reading the decretal order; and also the said order, dated the sixteenth day of *June* last;

THE COURT ordered the several *moduses* to be established; but did not award any costs.

ALLEN against CHRITCHLEY.

TRIN. TERM,
23. GEO. 3.

Gloucestershire, 1st July 1783.

THE dean and chapter of the *Holy and Undivided Trinity of Bristol*, as impropiators of the parish of *Saint Oswald*, otherwise *Saint Catherine*, in the city and county of *Gloucester*, claimed the great and small tithes arising therein, particularly of *Tulwell Court Messuage*, near the said city, and of the lands in the township of *Longford*.

The impropiators of the parish of *Saint Catherine*, in the city of *Gloucester*, are entitled to the small tithes of the hamlet of *Longford* in kind.

The defendant said, that he had great reason to doubt whether the plaintiffs were entitled to the *small tithes*, because the same, or at least such part as had arisen in the hamlet of *Longford*, had never been paid to the impropiator within the memory of man; and that it was always understood, that the *small tithes* were not paid, because the parish church was in ruins, and there had been no minister or curate to do the duty within the memory of man; that an annual sum of ten pounds, besides *Queen Anne's* bounty of four pounds, until within these few years last past, had been constantly paid, by the owners of the great tithes, to the minister, vicar, or curate of the parish of *Saint Mary's*, within the city of *Gloucester*, for doing duty there, for and in lieu of all privy or small tithes due to the said parish of *Saint Catherine's*.

The plaintiff replied; the defendant rejoined; and witnesses were examined only on the part of the plaintiff; and upon hearing counsel on both sides; and reading several depositions taken in the cause;

THE

ALLEN
against
CRITCHLEY.

THE COURT ordered the deputy remembrancer to take an account of the tithes demanded by the bill, and to tax the plaintiff his costs of suit to this time.

SKYNNER, *Chief Baron.*
EYRE, *Baron.*
PERRY, *Baron.*

TRIN. TERM,
23. GEO. 3.

HONEY against ABRAHAM.

Cornwall, 1st July 1783.

The vicar of *Liskeard*, in Cornwall, is entitled to the small tithes of *Bodgara Mills* and *Tadd Pool Meadow*, in kind.

THE vicar of *Liskeard*, in the county of *Cornwall*, claimed the tithes of the *Five Bodgara Corn Mills*, and the small tithes of *Tadd Pool Meadow*.

The defendant insisted, that five pounds, ten shillings, 2-year was payable as a composition for all tithes arising from the said mills and meadow and garden.

THE COURT ordered the defendant to account for all the tithes in kind demanded by the bill (a).

(a) On the third of February 1738, Hilary Term, in the second year of George the Second, the case of *Blatford v. Pitt* came before this Court. The vicar of *Liskeard* claimed the small tithes of *Dove's Farm*, *St. Job's Land*, *Sandy's Tenement*, *Goitbe's Close*, and *Hawkey's Tenement*, in the vill of *Rosnam*, in the said parish; and also of *Trebecca Will*

Town, *Flower Crofts*, *Venslow Ground*, *Lak Park*, *Yearly Meadow*, *Thorn Park*, *the Little Hill*, and the two *Lambert Closes*. The defendant denied that the plaintiff had been duly presented to the vicarage. But on reading the proofs in the cause, THE COURT ordered the deputy to take an account of the tithes demanded by the bill.

TRIN. TERM,
23. GEO. 3.

BLACKHALL against HARRIS.

Warwickshire, 3d July 1783.

The vicar of the parish of *the Holy Trinity*, in the city of *Coventry*, is not entitled to the small tithes arising in the township of *Counden*; but the tithes, both great and small, belong to the lay impropriators thereof.

THE plaintiffs claimed the great and small tithes of the township of *Counden*, in the county of the city of *Coventry*; and stated, that the said tithes had, before the dissolution of monasteries, been part of the possessions of the cathedral church in *Coventry*; and that they were entitled to them under and by virtue of a grant of *King Henry the Eighth*, made in the thirty-fourth year of his reign, to *Richard Andrew* and *Leonard Chamberlayne*.

The defendants *Harris* and *Soden* said, that the township of *Counden* was in the county of the city of *Coventry*, or in the county of *Warwick*, or one of them, and in the parish of *the Holy Trinity*, in the said city or county; that all the tithes arising therein had, before the dissolution of monasteries, been part of the possessions of the priory or cathedral church of *Coventry*; that the plaintiffs never were entitled to all the tithes arising in the said vill, or had at any time received the same; but that

BLACKHALL
against
HARRIS.

that the vicar of the parish was well entitled to some tithes therein, and had constantly enjoyed the same ever since, and for many years before the dissolution of monasteries, by virtue of some endowment, composition, or agreement between the then vicar and the prior and convent of the said priory. They admitted, that the plaintiffs were entitled to the tithes of corn, grain, and hay, and to divers other tithes arising in the said vill; but insisted, that no tithes, either great or small, arising in the said vill, had been paid in kind within the memory of any person living, but that certain sums of money had been constantly paid, both to the impropiator and the vicar, in lieu of the tithes due to them respectively. They further said, that they had caused a bill to be filed in this court against the plaintiffs and the vicar to compel them by interpleader, to settle and adjust their respective rights and demands between them, so that they, the defendants, might be enabled to pay their tithes with safety. And the said defendants set forth the several farms they held and occupied, and the values and quantities of the tithes thereof.

The defendant *Rann*, the vicar, admitted, that the plaintiffs, on the tenth day of *October* 1773, and ever since, had been, and still were seised of, or well entitled, as owners or proprietors, to all great tithes yearly arising in the said vill, or to some *modus* in lieu thereof; but denied that they were entitled to any other tithes arising therein, for that he, as vicar, was entitled to all small tithes, by endowment or prescription, arising in the said vill, and all other vill, or hamlets in the parish; and that, by a *TERRIER* dated in the year 1693, intitled, "A Terrier of the Glebe Land and Tithe belonging to the vicar of *Trinity* parish, in *Coventry*," made in the year 1693, and delivered in at the primary visitation of the *Bishop of Coventry and Litchfield*, it appeared, that all the small tithes of *Winnall* and *Counden*, and other petty hamlets belonging to the said parish, were due to the vicar: and he stated, that he had received after the rate of five shillings an acre, in lieu of the tithes of flax sown in the said hamlet of *Counden*; and insisted, that the payments to his predecessors and himself in lieu of the tithes, and the said terrier, were evidence of his right to the small tithes by endowment, prescription, or otherwise.

The plaintiffs replied; the defendants rejoined; and witnesses were examined on the part of the plaintiffs only; and upon hearing counsel on both sides; and on reading the depositions on behalf of the plaintiffs;

THE COURT ordered an account to be taken of what was due for the tithes demanded by the bill from the tenth day of *October* 1773; and the defendants to pay what should appear due thereon, with costs.

WROTTESLEY,

HILARY TERM
24. GEO. 3.

WROTTESLEY, Bart. *against* WIGHTWICK.

Staffordshire, 24th February 1784.

Quere, Whether there is a modus of 3s. 6d. a year payable to the impropiator of the tithes of the township of Bilbrooke, in the parish of Tettenhall, in Staffordshire, in lieu of the tithes of Moat's Farm.

THE bill stated, that the plaintiff, since his father's death, had been impropiator of, and was well entitled to, the tithes, both great and small, arising on divers lands and grounds in that part of the township of *Bilbrooke* which lies in the parish of *Tettenhall*, in the county of *Stafford*, and particularly on all such lands as were formerly in the occupation of *Richard Cresswell* and others, the plaintiff's ancestors, to whom the same were granted, by letters patent dated the eighth of *May*, in the third year of *Edward the Sixth*; that part of the said lands were then in the possession of the defendant; that the plaintiff's father was also, in his lifetime, the owner of the tithes, by inheritance from his ancestor; that he did, many years ago, let the same to one *J. Parker*, by verbal agreement, from year to year; that *Parker* rented the said tithes for near fifty years; that he always, from time to time, let the same to the owners or occupiers of the lands out of which the same issued, or gathered the same, or accepted compositions in lieu thereof, as he thought proper, without consulting the plaintiff's father or the plaintiff concerning the same; that the defendant, ever since and before 1775, had been the owner and occupier of lands in that part of the township which lies in the said parish, and particularly of *Cresswell's Closes*, which he purchased of the former owner thereof; that in 1776, the plaintiff agreed to let his said tithes to such of the several owners or occupiers of the said lands out of which they were issuable as were inclined to take the same at a certain rent or sum for that year only; that such proposal being made to the defendant, he, at first, objected to the payment of tithe hay; but that he, the plaintiff, being entitled thereto, as well as to the other tithes, had refused to let him any part thereof unless he would agree to pay a rent or composition for the whole together; that the defendant thereupon agreed to take the tithes of those lands which were in his own occupation in the said township for the said year, at thirteen pounds, thirteen shillings; that A MEMORANDUM of such agreement was reduced into writing, and signed by the defendant; that the said agreement was not to bind or affect him thereafter in respect to the payment for tithe hay, in case he should produce a title to the same, or any exemption therefrom; that he afterwards paid the said rent or composition for all the tithes of corn, grain, and hay, and other titheable matters arising during the said year on all the lands in his occupation within the said township; and that the tithes of hay and clover were included in the said agreement; that the plaintiff proposed to let the defendant the tithes of the said lands for the following year; that he refused the same, unless an exception or allowance was made in respect of tithe hay arising on the said lands;

lands ; that the plaintiff declined to let any part of his tithes, unless he would take the whole thereof together, in the same manner as he had before ; that thereupon the defendant, for the following years, duly set forth the tithes of corn and grain arising on all the lands and grounds in his occupation in the said township (except upon *Cresswell's Close*), and the plaintiff took the same in kind ; that the defendant, in the said years, had mowed a great number of acres of grafs and clover growing upon the lands in his occupation, and made the same into hay, and foddered and carried it away without rendering the tithes thereof, or compounding for the same, but had withheld the said tithes to his own use ; that he had also, on *Cresswell's Piece*, reaped oats, pease, barley, and flax ; that he had set out the tithes thereof, but had carried away the corn and grain without setting out the tithes thereof. The bill therefore prayed, that the defendant might account for the said tithes of hay, corn, and grain, and pay what should appear to be due thereon.

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The defendant said, that about the eighth of *July* 1767 he purchased, under a decree of chancery, the land called *Cresswell's Piece*, for two thousand, two hundred pounds, together with the tithes thereof ; that he still continued owner and occupier of the said lands, and also of certain other lands in his said answer mentioned ; that the ancient farm called *Moat's Farm* was situate in the said township ; that there had been immemorially, within that part of the township which lies within the parish of *Tettenhall*, a custom that the owner or occupier of *Moat's Farm* should pay yearly, at *Easter*, three shillings and sixpence, as a *modus* in lieu of all tithes of hay and clover, and all small tithes arising thereon ; that neither the plaintiff, nor those under whom he claimed, had, at any time whatever, taken the said last-mentioned tithes in kind, or received any satisfaction in lieu thereof, except the said *modus* ; that *Lord Gower* was, or claimed to be, the owner of, or to have some interest in, the tithes of *Bilbrooke* ; that he had received the said *modus* ; that he had agreed to take the tithes for one year at thirteen guineas, as stated in the bill ; but that there was no mention of the tithes of hay or clover, or any other species of tithes from any lands ; but that the same were let to him in a general manner, by the names of the tithes of his farms ; that therefore he did not consider the tithes of hay and clover to be included therein. He admitted, that he had growing on *Cresswell's Piece* corn, grain, and flax ; that he had carried such corn and grain without setting out the tithes thereof, conceiving that he was the owner of the said tithes ; but he found he was not, and that the value thereof did not exceed four pounds, ten shillings, which he had offered to pay ; that the plaintiff had accepted of him five shillings for the tithes of flax
on

WROTTESLEY on *Cresswell's Piece* (a) : and he set forth his titheable matters and things.
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 WIGHTWICK.

The plaintiff replied ; the defendant rejoined ; and divers witnesses were examined on both sides ; and upon hearing counsel on both sides ; and reading a grant of *Edward the Sixth* to *Walter Wrottesley, Esquire*, dated the eighth of *May*, in the third year of his reign, of the tithes of corn, grain, hay, &c. ; several depositions taken in the cause ; a receipt not signed, dated the twentieth of *March* 1782, purporting to be a receipt for the use of *Sir John Wrottesley* of *Thomas Wightwick* for two years chief rent, and two years rent of small tithes of the late *Savage's Farm* ; two years chief rent of *Corbyn's Piece*, tenpence ; two years ditto of *Cresswell's Piece*, eightpence ; two years small tithes, at three shillings and sixpence ; ten shillings and sevenpence ; ditto 1780 and 1781 ; and upon full debate ;

THE COURT ordered the two following issues :

FIRST, " Whether the plaintiff is seised in his *demesne as of fee*,
 " or of any other estate, of and in the said tithes of corn, grain,
 " and hay, arising, growing, and renewing, from and out of the
 " said lands and grounds in the defendant's occupation in that
 " part of the township of *Bilbrooke* which lies within the parish
 " of *Tettenhall*, in the county of *Stafford*."

SECONDLY, " Whether, from time whereof the memory of
 " man is not to the contrary, the owner or occupier for the time
 " being of a certain ancient farm, and lands thereunto belonging,
 " called *Moor's Farm*, situate within that part of the township
 " of *Bilbrooke*, which lies within the said parish of *Tettenhall*,
 " hath paid and ought to pay, yearly, at *Easter*, or so soon after
 " as demanded, unto and to the use of the impropiator or
 " owner of the tithes of the said parish, and his farmers or lessees
 " for the time being, the sum of three shillings and sixpence, as
 " a *modus* for and in lieu and satisfaction of all tithes of hay and
 " clover, and of all small or white tithes arising, growing,
 " renewing, and increasing, from and out of the said ancient
 " farm and lands."

The plaintiff in equity to be plaintiff at law ; to be tried by a special jury ; the judge at liberty to indorse, &c.

SKYNNER, *Chief Baron*.

EYRE, *Baron*.

HOTHAM, *Baron*.

PERRY, *Baron*.

(a) In the case of *Wrottesley v. Slater*, which came before the Court on the ninth of February 1746, the plaintiff, and *Parker* as his lessee, by parol, of the said tithes, demanded, *inter alia*, the tithes of flax growing on *Cresswell's*

Piece. And THE COURT ordered the defendant to account with *Parker* for the said tithes, at the rate of *five shillings* yearly for every acre sown with flax, pursuant to the statute.

BAKER *against* MASON.EASTER TERM
24. GEO. 3.*Gloucestershire, 10th May 1784.*

THE rector of *Dowdeswell* claimed the tithes, both great and small, arising in the parish; and stated, that he had accepted a composition in lieu thereof to *Michaelmas* 1779; that the defendants had occupied land since that period, on which they had had several titheable matters, particularly ewe sheep which had yeanned lambs; cows which had yielded calves and milk; sheep called *tegs*, *shear hogs*, *thäves*, and *wethers*, which they had thorn, depastured, and sold to the butchers in the neighbourhood before the next shearing-time; saddle-horses, which they had taken in to feed for hire at so much a-week; and bullocks, steers, heifers, and oxen, which they had fattened and sold; the fair and full tithes of which they had refused to pay. The bill therefore prayed an account and payment.

The rector of *Dowdeswell*, in *Gloucestershire*, claims the tithes of lambs, calves, milk, sheep, and agistment of barren cattle.

The defendant *Mason* said, that he had, to *Michaelmas* 1779, paid a yearly composition for his tithes; that from *Michaelmas* 1779 to *Michaelmas* 1780, he had kept forty ewe sheep; that thirty-three of their lambs had lived to be titheable; that the plaintiff had received the tenth lamb, and the proportionate value of the remaining three; that from *Michaelmas* 1780 to the time of the plaintiff filing his bill, he had thirty-eight ewe sheep, thirty of which, in 1781, brought forth lambs, which lived to be titheable; that in 1781, he gave the plaintiff notice, that he should set out the tithe of the said thirty lambs; that no one came at the time fixed; that he set out the same; that they were sent by his servant; that the servant told the plaintiff's tithing-man they were his master's tithe lambs; that he left them in the court; that no one having appeared at the tithing, he did so as a favour, and not as a customary way of rendering such tithes; that on the same evening, or the day after, the plaintiff's tithing-man told him, that the lambs were not the plaintiff's, and that therefore he had turned them into the road; that he gave no reason why the plaintiff would not accept the same; that the said lambs were able to sustain themselves without their dams, for that the youngest was three months old; and that they were still living, and had sustained themselves by depasturing in common with other sheep. The defendant further stated, that he kept on a farm in the adjoining parish of *Withington* milch cows, which he depastured there from *November* 1779 to the *May* following, when he brought ten of them to his farm at *Dowdeswell*, and milked them there the ensuing summer; that previous thereto, he gave the plaintiff notice that he had brought

The defendant says, that he had fairly set out and sent to the rector the tithes of lambs; but that he had refused to receive the same;

that he had also set out his tithe milk by the nineteenth and twentieth meals; and that the rector had received the

whole thereof, except a small quantity.
them

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that he had also
paid him his
tithe of calves ;

that he had not
depastured any
sheep between
shearing day and
shearing day,
except on lands
which had, in
the same year,
paid tithe of
hay ;

that he had not
depastured any
barren cattle for
hire.

The other de-
fendant answers
to the like effect

The cause
heard.

The tithes of
calves and agist-
ment decreed.

them there ; and that he should set out the tithe milk thereof every nineteenth and twentieth meal ; that he had continued so to do ; and that the plaintiff had received the same, except twice or thrice, when the defendant's servants, at the next time of milking, threw the said milk down, to have the use of the vessels ; and that the value of such milk so wasted was not more than two or three shillings. He further said, that being obliged to spend the produce of his farm at *Withington* on the said premises, he had the benefit of the courts and folds thereto belonging, from the time he quitted the same to *Michaelmas* 1780, for the convenience of his cattle to eat the said produce ; that therefore, in *November* 1779, he brought his cows and other part of his stock from *Dowdeswell* to the said farm at *Withington*, where all his cows in the ensuing season dropped their calves ; and that he had no calf dropped in *Dowdeswell* between *Michaelmas* 1779 and *Michaelmas* 1780. He further said, that he had afterwards kept ten milch cows in *Dowdeswell*, which had brought forth ten calves ; that the plaintiff had received one of them as the tithe thereof ; that between *Michaelmas* 1780 and 1781 he had fattened on his lands in *Dowdeswell* some sheep for sale ; that they were sheared in 1781 ; that the plaintiff received the tithe wool ; that they were then sent to *London* for sale ; and that the said sheep were all the fattened sheep he had had on the said farm since the ceasing of the said composition ; that at *Saint James's Tide* in 1781 he sold several sheep, which were sheared about *Midsummer*, the tithe wool whereof, and of his whole flock, had been duly set forth and received by the plaintiff ; that he had depastured the said sheep after the shearing thereof on lands which had paid tithe hay ; and that therefore no agistment was due for the same ; and he denied, that he had kept, fed, agisted, or depastured for hire any barren or unprofitable cattle on his lands.

The defendant *Baldwin* said, that he occupied *Upper Dowdeswell Farm* ; that the land on *the Hills* thereof was not so fertile as the lands in *the Vale* ; that he also occupied pasture land in the adjoining parish : and he spoke much to the same effect as the defendant *Mason* had done.

The plaintiff replied ; the defendant rejoined ; and witnesses were examined on both sides ; and upon hearing counsel ; and reading the evidence ; and on full debate of the matter ;

THE COURT ordered the deputy to take an account of what was due from *Mason* for the tithes of agistment and calves demanded by the bill ; and a like account of agistment tithe from the defendant *Baldwin*.

DAVIES *against* DUPPA.EASTER TERM,
24. GEO. 3.*Kent, 29th April 1784.*

THE bill stated, that the dean and chapter of the cathedral church of *Christ and the Blessed Virgin Mary* of *Rocheſter*, in the county of *Kent*, being ſeiſed, to them and their ſucceſſors, of certain portions of tithes therein, by indenture dated the firſt of *December 1759*, demiſed to *Baldwin Duppa* ſeveral portions thereof, from the twenty-ninth of *September* then laſt paſt, for twenty-one years, at the yearly rents and covenants therein mentioned; that *Baldwin Duppa*, by virtue of the ſaid leaſe, entered into poſſeſſion of the ſaid portion of tithes, and held the ſame until his death in *July 1764*; that ſince his deceaſe, the ſame had been held by the defendant *Richard Duppa*, as deviſee named in the will of the ſaid *Baldwin Duppa*, deceaſed, until the expiration of the ſaid leaſe; that by indenture of leaſe dated the thirtieth of *November 1778*, made by the then dean of the one part, and the plaintiff *George Davies* of the other part, the ſaid dean and chapter, for the conſideration therein mentioned, demiſed to *Davies* the ſaid ſeveral portions of tithes, by the deſcription of "*Tudor's Portion*," ariſing out of certain fields belonging to the tenants of the *Tudors*, with other tenants of *Barton*, in the pariſh of *Stoke*, in the hundred of *Hoo*, as ſet forth in the ſaid bill, to hold the two ſeveral portions of tithes, with all rights, profits, and appurtenances whatſoever to them ſeverally in any wiſe belonging, for twenty-one years, paying for the portion of tithes called *Tudor's* ſix ſhillings and eightpence, and for the other portion of tithes, as well great as ſmall, yearly ariſing in the lordſhip and manor of *Malmes*, thirteen ſhillings and fourpence yearly; that by virtue of the ſaid leaſe, *Davies* had become entitled to the ſaid ſeveral portions of tithes ſince the twenty-ninth of *September 1780*; that the ſaid *Baldwin Duppa* was in his life-time, and at his death, ſeiſed in fee, or of ſome other eſtate of inheritance, of and in the impropriate rectory of the pariſh of *Stoke*, and the tithes and profits thereto belonging, and of and in the advowſon of the vicarage; and alſo of and in the lordſhip and manor of *Malmes*, together with divers lands and hereditaments in the ſaid pariſh of *Stoke*; that being ſo ſeiſed, he duly made his will, dated the twelfth of *Auguſt 1760*; that he thereby deviſed all his ſaid manor, and his meſſuages, parſonage, rectory impropriate, perpetual advowſon, tithes, farms, lands, tenements, and hereditaments, to the defendant *Richard Duppa*, for his natural life, as in the ſaid will is ſet forth; that *B. Duppa* died in *July 1764* without altering his will; that at his death the ſaid defendant became ſeiſed as aforeſaid; that he had ever ſince been the proprietor thereof; that on the twenty-ninth of *September 1779*, he took

The plaintiff *Davies*, as leſſee under the dean and chapter of *Chriſt Church*, in *Rocheſter*, of the two portions of tithes ariſing in the manors of *Tudor*, *Barton*, and *Malmes*, in the pariſh of *Stoke*, in the hundred of *Hoo*, and in the county of *Kent*, ſtates,

that the late *B. Duppa* was impropriator of the rectory of *Stoke*, patron of the vicarage, and owner of the manor of *Malmes*; that he had formerly rented of the dean and chapter the ſaid portions of tithes until the twenty ninth of *September 1780*; and that, on his death, he deviſed the ſaid eſtates to the preſent

defendant *R. Duppa*,
into

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that the boundaries of the lands out of which the said portions of tithes arose had, in many places, been enlarged, and the names thereof changed, so that the identical lands could not now be ascertained ;

that the defendant, taking advantage of those circumstances, had refused the plaintiff permission to take the said tithes, except of wheat of *Eight Acres*, part of *Malmes Portion* ;

pretending, that as the particular fields could not be described, the said portion of tithes had merged in the rectory ;

and he prayed, that an account might be taken, and a commission issued to ascertain the said lands-

into his own hands and possession the said lordship of *Malmes*, and the said rectory of *Stoke*, and the tithes and profits arising therefrom, and the lands there belonging to him ; that he had since occupied the same ; that *Baldwin Duppa* in his lifetime, and the owners of the rectory had, for time immemorial, or for a number of years past, rented the said several portions of tithes, and accepted leases thereof from time to time from the dean and chapter ; that they and their lessees of the said rectory had accordingly received and taken the said several portions of tithes, together with the rest of the tithes arising within the said rectory and parish, without distinction, until the twenty-ninth of *September 1780* ; that the dean and chapter had for time immemorial, or for many years past, granted and renewed leases, from time to time, of the said several portions of tithes, by the same names and descriptions of the tithes, and of the lands out of which they issued, as in the said lease are described ; that the same being very ancient descriptions, and divers of the fields and closes having since acquired and been called by new and different names, and divers others of the said fields and closes having been since enlarged, and others lessened in their dimensions, few, if any, of them could now be discovered or found out by the names and descriptions given them in the lease, so that the plaintiffs were not now able to ascertain the specific lands out of which the said several portions of tithes issued ; that the defendant *Richard Duppa*, taking advantage of this circumstance, refused to permit the plaintiff *Davies* to receive any part of the said portions of tithes, save the tithes of wheat growing on a certain field, containing *eight acres*, part of the lands out of which the said *Malmes Portion* of tithes issued ; that he had ever since the said twenty-ninth day of *September 1780* actually taken and carried away all the said several portions of tithes so demised to the said plaintiff *Davies*, save as aforesaid, together with the rest of the tithes arising within the said rectory and parish, and converted the same to his own use, and refused to account or to make him any compensation for the same, although the said plaintiff *Davies*, previous to the twenty-ninth of *September 1780*, and on or about the twenty-first of the said month, did give notice to the defendant to set out the said several portions of tithes in kind for him ; that the plaintiffs had frequently applied to the defendant to discover and ascertain the particular lands out of which the said several portions of tithes issued and were payable, that the plaintiff *Davies* might be enabled to take the same in kind ; that the said *R. Duppa* insisted, that as the particular lands or fields out of which the said portion of tithes issued cannot be discovered or ascertained by the plaintiffs, their right in and to the same is thereby lost, and that the same are merged in the said rectory impropriate, and belonged to the defendant. The bill therefore prayed, that the defendant might be decreed

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to account with the plaintiff *Davies* for the value of the said several portions of tithes taken by the defendant since the twenty-ninth of *September* 1780, and pay what, upon such account, should be found due to the plaintiff; that the defendant might discover and ascertain the specific lands and fields out of which the said several portions of tithes respectively issued, and ought to be taken; or in case it should appear necessary, that the same might be set out, distinguished, and ascertained under the direction of this court; that a commission might issue to ascertain and distinguish the specific lands and fields out of which the said several portions of tithes respectively issued; and that all proper directions might be given for that purpose.

The defendant said, that in the latter end of the last century, *Baldwin Duppa* purchased the rectory of *Stoke*, and also *Stoke Place Farm*, with divers lands thereto belonging, and in 1703 the manor of *Malmmain*, with *Malmmain Hall Farm*; that, as rector impropriate thereof, he became entitled to all tithes arising in the parish of *Stoke*, except such as had been thencefore legally appropriated from it; that he continued seised thereof till his death; that his son *Baldwin Duppa*, in the bill named, then became seised thereof until his death, and by will devised the same to the defendant *Richard Duppa* for life; and that ever since *June* 1764 he had been in possession thereof; that the dean and chapter of *Rocheſter* were, in right of their church, seised, to them and their successors, of a certain portion of tithes arising in the rectory of *Stoke*, called *Tudor's Portion*, and also to the tithe of corn arising out of certain lands in the manor of *Malmmain*; that the said manor extended not only over the whole of the parish of *Stoke*, but also over four other parishes, which, together with the parish of *Stoke*, lay in the hundred of *Hco*; that the lands thereof had not been ascertained for many years; that it still remained uncertain, whether all the lands out of which the tithes which were mentioned to arise within the manor of *Malmmain* and the *Eight Acres* of glebe land lay in the parish of *Stoke*, or in other parishes; that a lease, dated the first of *December* 1759, had been made of the said portion of tithes by the then dean and chapter to the said *B. Duppa*; that he had continued entitled to such tithes until his death; that, by the will, the defendant became entitled thereto for the remainder of the term; that the said *Duppas* held the said several portions of tithes, called *Tudor's Portion* and *Malmmain's Portion*, under the said leases, from about the year 1725; that on the expiration of the said leases, a lease of the said portion of tithes had been given by the dean and chapter to the plaintiff; that *Malmmain Hall Farm* was only a small part of a large estate which had been thencefore in the family of the *Ropers*; that from one of the fields being called *the Field without the Park*, and from there being

The defendant says, that he is impropriator of the rectory of *Stoke*, and owner of *Stoke Place Farm* and of *Malmmain Hall Farm*;

that the plaintiff is entitled to *Tudor's Portion* and to *Malmmain's Portion* of tithes; that the said farms are in the manor of *Malmmain*, but that the manor extends over several parishes; that it is uncertain, whether any of the lands from which the said tithes arise are in the parish of *Stoke*, except the *Eight Acres*;

that the lands belonging to *Malmmain Hall Farm* were formerly a *Park*;

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that the portions of tithes were granted before the park was disparked, and therefore could not arise from the said lands ;

that *Stoke Place Farm* had been formerly held separately ;

and that, as the lands from which the said tithes arose could not be distinguished, he was, as proprietor of *Stoke*, entitled to all the great tithes of the parish.

ponds in particular situations, and from the size of the inclosures and the regularity of the hedges, the greater part of the lands constituting *Malmmain Hall Farm* had been formerly a PARK belonging to the mansion-house of the estate, and particularly the fields, closes, or parcels of land set forth in his answer ; that no tithes had been at any time paid for or in respect of such lands ; that the said portions of tithes then vested in the dean and chapter before the park was disparked ; that consequently none of the lands could be any part of the lands out of which the said portion of tithes arose ; that *Malmmain Hall Farm* also consisted of several other fields, as in his answer was mentioned, but of no other lands ; that *Stoke Place Farm* consisted of no other fields than those described in the said answer ; that until within thirty years last past, *Stoke Place Farm* had been occupied separately from *Malmmain Hall Farm*, together with the great tithes thereof ; that all the several parcels of land belonging respectively to the said farms were respectively distinguished by the said names, and had ever been in the same form and state nearly as they then were ; and that he could not distinguish or ascertain them more accurately than in his answer was mentioned ; that part of the tithes claimed by him and his ancestors under the said lease arose out of *Eight Acres* of glebe land belonging to the vicarage, the tithe of which they had ever taken ; but that the plaintiff *Davies* had received the tithes of corn thereof ; that the plaintiff not being able to describe the lands of which the tithes were claimed, other than the *Eight Acres*, he, the defendant, was, as rector of *Stoke*, entitled to the great tithes arising therein, the same not having been severed from the said rectory ; and he admitted, that he had, since the commencement of *Davies's* lease, taken all such tithes, except as aforesaid, to his own use, without making him any satisfaction for the same ; and denied, that he ever had in his custody or power any deed, evidence, muniment, or writing which would ascertain or discover the particular fields or lands out of which the several portions of tithes claimed by the plaintiff issued, or any or either of such fields or lands, save as described in his answer.

The cause heard.

The plaintiff replied ; the defendant rejoined ; and without any witnesses being examined, the cause came on to be heard this day ; and upon hearing counsel on both sides ;

A commission issued to ascertain the specific lands out of which the said portions of tithes arose.

THE COURT ordered a commission to be issued to ascertain and distinguish by proper metes, descriptions, and boundaries, the specific lands and fields in the parish of *Stoke*, within the hundred of *Hoo*, in the county of *Kent*, out of which *Tudor's Portion* and *Malmmain's Portion* arose ; all parties to produce before and leave with the commissioners, upon oath, all deeds, books, evidences, and writings, in their or either of their custody or power, relating thereto, as the said commissioners shall direct ; and the defendants to join and strike commissioners names in six days,

days, or in default thereof that the commission do issue to the plaintiff's own commissioners ; and that the cause be continued in the paper of causes to be further heard on the return of the commission.

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A commission accordingly issued, tested the thirtieth day of *June* 1783 ; which was returned with a certificate the thirtieth day of *October* 1784, stating, that a survey had been taken of the premises in question ; and that after the examination of such witnesses as the commissioners had been able to procure, together with the perusal of a map of the *manor of Malmain*, taken in 1700, they were not able to ascertain the names, quantities, or descriptions thereof, by reason of the names of the several portions therein being differently described from the documents before them, and stated in the certificate ; and that no information could be obtained from the evidence produced to them that could in anywise lead or tend to a discovery thereof, so as to particularize the same or any part thereof.

A commission issued, and is returned inefficiently.

The cause came on to be further heard on the said certificate on the twenty-third of *November* 1784 ; when the Court ordered another commission to be issued to enquire and ascertain, by all lawful ways and means, the specific lands and fields out of which the two several portions of tithes called *Tudor's Portion* and *Malmain's Portion* did issue, with the usual directions, as in the former decree.

A second commission issued for the same purpose.

A second commission accordingly issued, directed to different commissioners ; and they returned the same, with a certificate, dated the first of *April* last ; and stated, that they could not collect evidence or proof sufficient in their judgment to ascertain and distinguish by proper metes, descriptions, and boundaries, the specific lands and fields in the said parish out of which the two several portions of tithes did issue.

The second commission returned without effect.

The matter of the certificate came on the sixth of *June* 1785.

THE COURT gave the plaintiffs liberty to issue a commission for the examination of witnesses in the cause, with the usual directions ; and divers witnesses were according examined under it ; and the cause came on again on the thirteenth day of *December* 1786 ; when upon hearing counsel on both sides ; and reading various proofs ; and the former decrees ;

A commission issued to examine witnesses in the cause.

THE COURT ordered a commission to be directed to *proper commissioners* authorising and empowering them, or any two or more of them, by all lawful ways and means, to enquire into and ascertain the specific lands and fields out of which *Tudor's Portion* and *Malmain's Portion* do issue, and which are particularly described in the last lease of the said two portions granted by the dean and chapter of *Rochester* to *B. Duppa*, dated the first of

A third commission issued to ascertain the specific lands ;

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against
DUPPA.
or to set out o-
ther lands in
lieu thereof.

December 1759; that if the commissioners shall not be able to ascertain and distinguish by proper metes, descriptions, and boundaries, the said specific lands; and as the number of acres composing the said two portions (except the field called *Great Firs*, part of *Malmmain's Portion*) is sufficiently ascertained, namely, that *Tudor's Portion* comprises forty-five acres, and *Malmmain's Portion* comprises one hundred and eighty-seven acres, exclusive of the field called *Great Firs*, the said commissioners do set out and allot by proper metes, descriptions, and boundaries, forty-five acres of land lying within the parish of *Stoke*, in lieu of the above-mentioned portion called *Tudor's Portion*, and also one hundred and eighty-seven acres of land belonging to the defendant *Richard Duppa*, and situate in the manor of *Malmmain* and parish of *Stoke* above-mentioned, in lieu of one hundred and eighty seven acres of land part of the above-mentioned portion called *Malmmain's Portion*.

The commission
returned; and
quashed.

A commission accordingly issued; and the commissioners returned the same, together with two certificates thereto annexed, dated the fifth of *June 1787*.

The cause came on again on the twenty-fifth of *June 1787*; and upon hearing counsel;

A fourth com-
mission issued.

THE COURT ordered the said two certificates to be quashed; and further ordered a commission to enquire into, ascertain, and distinguish the said specific lands, as particularly described in the last lease of the said two portions granted by the dean and chapter of *Rocheſter* to *Baldwin Duppa*, bearing date the first day of *December 1759*; and in case the commissioners shall not be able to ascertain them by proper metes, descriptions, and boundaries, and as the number of acres composing the said two portions, except the field called *Great Firs*, part of *Malmmain's Portion*, is sufficiently ascertained, namely, that *Tudor's Portion* comprises forty-five acres, and *Malmmain's Portion* an hundred and eighty-seven acres, exclusive of the said field called *Great Firs*, the said commissioners, or any two of them, do set out and allot by proper metes, descriptions, and boundaries, forty five acres of land lying within the said parish of *Stoke*, in lieu of the above-mentioned portion called *Tudor's Portion*; and also one hundred and eighty-seven acres of land belonging to the defendant *Richard Duppa*, and situate and lying within the manor of *Malmmain* and parish of *Stoke*, in lieu of one hundred and eighty-seven acres of land part of the above-mentioned portion called *Malmmain's Portion*.

The fourth com-
mission return-
ed.

A commission accordingly issued, tested the thirteenth day of *June* last, directed to *William Coke*, *Robert Steele*, and *J. W. Rose*; and they returned the said commission into this court, with a cer-

tificate thereunto annexed, dated the third day of *August* last, as in the decree was fully stated.

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The cause came on on the eighth of *November* 1787; and upon hearing counsel; and reading the decree, commission, and certificate; and the answer of *Richard Duppa*;

THE COURT ordered the certificate to be ratified and confirmed; and the lands and fields in the said certificate described as forming the portion called *Tudor's Portion*, all of which said pieces or parcels of land are in the parish of *Stoke*, and all of which, except the field called *Parbrook Green Field*, are part or parcel of the farm now called *Tudor's Farm*, be deemed, considered, and taken to be the specific lands and fields in the said parish within the said hundred of *Hoo*, out of which the said portion of tithes called *Tudor's Portion* doth issue; that the said one hundred and eighty-seven acres of land belonging to *Richard Duppa*, in the manor of *Malmmain* and parish of *Stoke*, particularly described in the said certificate, be deemed, considered, and taken, as, for, and in lieu of one hundred and eighty-seven acres, part of the specific lands and fields in the said parish and hundred, out of which *Malmmain's Portion* doth issue.

The certificates confirmed, and the lands therein described ordered to be deemed and taken to be the lands out of which *Tudor's Portion* and *Malmmain's Portion* of tithes do issue.

THE COURT further ordered the deputy to take an account of what was due to *G. Davies* from *R. Duppa*, for all the titheable matters which had arisen since the twenty-ninth day of *September* 1780, upon the several lands and fields hereinbefore decreed to be deemed and taken to be the specific lands and fields out of which *Tudor's Portion* doth issue; and also upon the said one hundred and eighty-seven acres out of which *Malmmain's Portion* doth issue.

The deputy takes an account accordingly.

THE COURT further ordered *R. Duppa* to pay the said plaintiffs their costs; all further directions and subsequent costs to be reserved, &c.

The defendant pays costs.

ABREY *against* SMITH.

EASTER TERM
24. GEO. 3.

Buckinghamshire, 7th May 1784.

THE plaintiff, as the lay impropriator of the parish of *Brill*, in the county of *Bucks*, claimed the great and small tithes within the rectory, there being no vicarage, from the fifth of *April* 1776; particularly of the farms called *Leatherlade's* and *Grove's*.

The impropriator of *Brill*, in *Buckinghamshire*, is entitled to the tithe of the lands called *Leatherlade's* and *the Groves* in kind.

The defendant admitted, that he occupied the pasture ground called *Leatherlade*, formerly part of the *Forest of Barnwood*, being fifty-nine acres, and also the meadow ground called *the Groves*,

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Groves, containing twenty acres; and insisted, that he and his predecessors had immemorially paid one pound, ten shillings a-year, as a *composition* for all tithes due to the plaintiff and his predecessors, as lay impropriator of the rectory of *Brill*, from the lands called *the Groves*; that he had regularly paid the same up to the fifth of *April* 1776, and had ever since been ready and was willing to pay and had tendered the same to the plaintiff. The defendant further said, that the lands called *Leatherlade's* were demised to him as being exempt from the payment of tithes, or any composition or satisfaction for the same: and he set forth an account of his titheable matters as well as he was able; and insisted, that two shillings in the pound which he paid for his other lands was a fair compensation for the tithes of his lands called *Leatherlade's* and *the Groves*, if tithes should be decreed payable for the same in kind; and that the said tithes amounted for both the said lands to eleven pounds, eight shillings *per annum*; but that as no tithes had been paid for the lands called *Leatherlade's*, he submitted, that the plaintiff ought to have proceeded at law to establish his right to the tithes thereof, and ought to be left to his remedy at law for that purpose.

The plaintiff replied; the defendant rejoined; and witnesses were examined on the part of the plaintiff only; and upon hearing counsel on both sides;

THE COURT ordered the defendant to account for the several titheable matters and things which had arisen on the lands in his occupation in the parish of *Brill*, from the fifth day of *April* 1776, with costs (a).

(a) On the twenty-fourth of *October* 1650, the case of *Dyneham v. Browne* came before the court. The bill, on the part of the impropriator of *Brill*, claimed the tithes arising in the townships of *Boreball* and *Oakley*. The defendant insisted, that the lands, of which tithes were demanded, had been formerly part of *Forest of Barnwood*, and were on that account tithe free. The Court retained the bill for a year, giving the plaintiff permission to bring several actions against such of the defendants as held their lands under several titles, and ordered the defendants to plead *nil debet*, and to give in evidence that the said lands were within the limits of the late *Forest of Barnwood* and not within the parish of *Brill*; but it does not appear that any actions were ever commenced. On the sixteenth of *June* 1656, the case of *Dyneham v. Hart* came before the court, in which the plaintiff, as lay impropriator, claimed the great and small tithes of the parish under letters patent from *James the First*. The Court direct-

ed an issue to try whether the *small tithes* belonged to the vicar of *Brill*, under the endowment of the vicarage, and on the trial a verdict was found against the vicar, and the defendant ordered to pay the small tithes to the lay impropriator. On the twenty-fifth of *November* 1708, the case of *Brangwin*, the lessee of the lay impropriator, *v. Davis* came before the court. The bill stated, that *Brill* and *Oakley* were distinct parishes, and claimed the great and small tithes thereof, particularly of the lands called *Whitcombe Hill*, *Sidelong Closes*, and *Corner Close*. The defendants insisted, that two shillings in the pound had been immemorially paid in lieu of the tithes of *Whitcombe Hill*; that on inclosing *the common* a composition had been made to the impropriator in lieu of the tithes thereof, and that they held the other lands under a covenant indemnifying them against the payment of tithes. The Court ordered the defendant to account for the tithes of *Whitcombe Hill*, *the Commons*, and the said *Closes*.

THE

THE DEAN AND CANONS OF WINDSOR *against*
LORD EFFINGHAM.EASTER TERM
24. GEO. 3.*Yorkshire, 7th May 1784.*

THE bill stated, that *Edward the Fourth*, being seised of an annual pension of twenty pounds payable by the abbot and convent of *Rufford*, in the county of *York*, did, by letters patent, under THE GREAT SEAL OF ENGLAND, dated at *Windsor*, on the eighteenth day of *July* in the seventh year of his reign, grant to the dean and canons of his majesty's free chapel of *Saint George*, within the castle of *Windsor*, the said annual pension, which the said abbot of *Rufford* was bound to pay for the mediety of the church of *Rotherham*, to hold to them and their successors, in pure and perpetual alms for ever; that *Henry the Seventh*, by like letters patent, dated at *Westminster* the fifth day of *May* in the fourth year of his reign, containing an *inspeximus* of the before-mentioned letters patent, did ratify and confirm the same; that *Henry the Eighth* by like letters patent, dated the first day of *June* in the second year of his reign, did also confirm the same; that by virtue thereof they had ever since been entitled to receive the said pension; that after the making the said letters patent the said pension was from time to time duly paid by the abbot of *Rufford* to them until the said abbey was dissolved; that after the dissolution thereof, a decree was made by THE COURT OF AUGMENTATIONS, in the twenty-eighth year of the reign of *Henry the Eighth*, whereby it was ordered, that the said pension of twenty pounds should be paid by the person or persons who should receive the rents of the tithes of *Rotherham*, at *Michaelmas* then next, with all arrears then due; that the same was accordingly paid by *Henry the Eighth*, in whom the possession of the said abbey on the dissolution thereof became vested, and by the several persons successively in whom the same from time to time became so vested; that the defendant for several years past had been possessed of a mediety of the said rectory or parsonage of *Rotherham*, and which upon the dissolution of the said abbey was granted to some person or persons under whom he claimed the same, and had for many years duly paid the said pension by half yearly payments till *Lady Day 1775*, from which time the same remained wholly due and unpaid; that the defendant's ancestors had also duly paid the said pension as the same became due; and that such payments had been made for the space of one hundred years; that the defendant was seised and possessed of the said rectory and parsonage; that his ancestors had duly paid the said pension to the plaintiffs only deducting the land tax; that he had various receipts and acquittances from the plaintiffs for such payments; that it appeared from

The rectory of *Rotherham*, in *Yorkshire*, is bound to pay a pension of 20l. a-year to the dean and canons of *Saint George's Chapel*, at *Windsor*.

THE DEAN AND
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HAM.

from the several deeds and writings in his custody or power that he was liable to pay the said pension. The bill therefore prayed, that the plaintiff's right to receive the said annual pension of twenty pounds, in respect of the mediety of the said parsonage of *Rotherham*, might be established; that an account might be taken of what was due in respect of the arrears; and that the defendant might be decreed to pay the amount thereof.

The defendant admitted, that he had been for many years past possessed of the rectory of *Rotherham*; and that his agents had paid the said pension; but he insisted, that it was by mistake; and denied generally, that the plaintiffs were entitled to receive the same.

The plaintiffs replied; the defendant rejoined; and witnesses were examined on the part of the plaintiff only; and upon hearing counsel; and reading the evidence taken in the cause; and the defendant's counsel consenting to a decree according to the prayer of the bill;

THE COURT ordered the plaintiffs' right to the said pension of twenty pounds *per annum*, in respect to the mediety of the said parsonage of *Rotherham*, to be established, and the deputy remembrancer to take an account of what was due to the plaintiffs for the arrears thereof, with costs.

TRIN. TERM,
24. GEO. 3.

CARR against HENTON; *et à Contra.*

Leicestershire, 28th June 1784.

The vicar of *Loweſby*, in *Leicestershire*, is only entitled to the sum of 6l. 3s. 4d. from the impropriator of the parish in lieu of all the small tithes arising therein.

THE vicar of *Loweſby*, in the county of *Leicester*, claimed all the small tithes, the mansion house, glebe lands, *Easter* offerings, oblations, obventions, dues, and all other duties and profits belonging to the said vicarage, and charged, that it was a perpetual vicarage; that in the reign of *King John* it was endowed with all the small tithes of the parish, and with all oblations and obventions, as well those arising at THE MOTHER CHURCH as at the chapel of *Newton*, in the said parish, and also with the glebe lands and the mansion house, as appeared by the endowment, under the testimonial seal of the *Bishop of Lincoln*; that in *Michaelmas Term*, in the eleventh year of *Charles the First*, *J. Waybread*, then vicar of the parish, exhibited his bill in this court against *Sir William Fainte, Knight*, then impropriator of the rectory of *Loweſby* and owner of the advowson of the vicarage, and also against others, the occupiers of lands in the parish, praying, that he might be established in the possession of the glebe lands and tithes belonging to the said vicarage; that the defendants put in their answers; and the plaintiff replied; and divers witnesses were examined on the fourteenth day of *October 1639*, when

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when the Court declared, that the said vicarage was a perpetual vicarage, and in the time of *King John* endowed in the form following, to wit, "*Consistit autem ipsa Vicaria in omnibus minutis Decimis ipsius Parochia, et omnibus Oblationibus, et Obventionibus, tam ad Matriam Ecclesiam, quam ad Capellam de Newton, provenientes et in Terræ Ecclesiæ, cum Manso.*" as by an extract of the said endowment under the testimonial seal of the then *Bishop of Lincoln* appeared at the hearing of the said cause, AND ORDERED, that it should continue a perpetual vicarage; that the said endowment was a good endowment; that the said *Waybread* and his successors vicars thereof should from thenceforth for ever thereafter hold, as well all the said small tithes, as other the premises in and by the said instrument of endowment in that behalf, limited to and for the same vicarage, according to the true intent and meaning of the said endowment; and that the said *Waybread* should have and receive all arrearages, issues, and profits of the same premises so allotted to and for the same vicarage, which had been detained from him by any person or persons whatsoever at any time since the said plaintiff's induction into the said vicarage; and that the said *Waybread* should have a commission directed to indifferent commissioners to enquire, as well by the oaths of witnesses as by other lawful ways and means, what was the true value of such tithes, and other the premises so detained, and where the same was, where and by whom the same tithes and premises had been severally and respectively detained, and that a bill should be *rated* for the costs the said *Waybread* had sustained in the suit. The bill then stated, that the defendants were occupiers of lands in the parish, and, after enumerating the titheable matters they had had thereon, prayed, that they might be ordered to account for the same from the twenty-third day of *June* 1775, and pay respectively what should appear due on such account.

The defendants admitted, that the plaintiff, ever since the twenty-third day of *June* 1775, had been vicar of the parish, and entitled to such yearly pension, salary, rent, or yearly payment as had been annually paid in lieu of all small tithes arising therein, and to such other dues as of right and by custom belonged to the vicarage; but they denied, that he was entitled to any small tithes in kind. They admitted, that during the time stated in the bill, they had kept, fed, and depastured in the parish oxen, bullocks, horses, cows, heifers, dry and unprofitable cattle, mares, sheep, and cows, from which they had calves, foals, lambs, milk, wool, and the several other articles and matters, yielding small tithes, as stated in the bill; that they had not set out the particulars and quantities of such matters and things yielding small tithes, but said, that in case the plaintiff should establish his right thereto they submitted to account; and they insisted, that the plaintiff was only entitled to a certain annual pension,
sum,

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sum, or salary of six pounds, thirteen shillings, and fourpence for his maintenance and support; and that the same was payable by the impropriator; that if any such endowment as before-stated had ever been made, it had been long since void or annulled by the disappropriation of the vicarage, or otherwise by the rectory having, from time immemorial, belonged to the impropriator, to whom they insisted all the tithes both great and small belonged; and that neither the plaintiff, nor any of his predecessors, had ever received from the tenants or occupiers of lands there any small tithes whatsoever, or any composition in lieu thereof.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and the cause came on to be heard on the twenty-third day of *June* 1783; when the same was ordered to stand over.

Sir Thomas Fowke, knight, *George Henton* and others, filed their cross bill against the vicar, stating, that the said *G. Henton* and others were occupiers of lands in the parish; that there was an impropriate or lay rectory therein; that *Sir Thomas Fowke* was the impropriator and patron of the vicarage, and also owner of the lands therein; that the said *Fowke* and his ancestors, and those under whom he claimed title to the said rectory and vicarage respectively, and the farmers, owners, and impropriators thereof, had, from time whereof the memory of man was not to the contrary, paid and been accustomed to pay to the vicar of the said vicarage of *Loweby* for the time being the sum of twenty nobles, or six pounds, thirteen shillings, and fourpence, as a yearly pension or salary for serving the cure of the said parish, and in lieu of all small tithes whatsoever due, or of right belonging to the vicar of the said vicarage, for or in respect of all and singular the lands, grounds, and premises within the said parish or vicarage; that the said vicars had constantly, for time immemorial, accepted and taken the said yearly pension by half yearly payments, at or about the *twentieth of May* and the *twentieth of November* in every year, as a yearly pension or salary for serving the cure of *Loweby*, and in lieu and full satisfaction of all small tithes due or belonging to the said vicarage, and had never made any further demand for the said small tithes, or enforced the payment thereof; that the impropriators had by way of increase to the income of the vicar, in regard no tithes were due, made some additional payment to the vicars out of their own bounty, and had for many years last past paid to them thirteen pounds yearly, instead of the ancient payment aforesaid; and that the vicar had in his custody several deeds and writings whereby it appeared that he was only entitled to the said yearly pension of twenty nobles, to the mansion house, and to the glebe lands for his service of the said vicarage. The cross bill therefore prayed,
that

that the said ancient yearly payment of twenty nobles, or six pounds, thirteen shillings, and fourpence might be established and decreed to be in full satisfaction to the vicar of the said vicarage for the time being of all small tithes arising within the said parish.

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The vicar admitted, that there was therein an impropriate or lay rectory; that *Fowke* was impropriator and patron of the advowson of the vicarage; but he denied, that *Fowke* and his ancestors, or those under whom he claimed, had paid immemorially twenty nobles as a yearly pension or salary for and in lieu of all small tithes due to the vicar in respect of all the lands in the parish, or that the vicars had ever accepted the same in lieu thereof; and insisted, that if the said sum of twenty nobles had heretofore been paid, such payment had been made and accepted under some temporary agreement between the rector and vicar for the time being, or by means of some undue and improper influence; and that he was not bound thereby nor compellable to take the said yearly pension in lieu of his small tithes. He further insisted, that the vicarage was a *perpetual vicarage*; that in the reign of *King John* it was endowed with and consisted in all the small tithes of the parish, and all oblations and obventions, as well those arising at THE MOTHER CHURCH as those at *the chapel of Newton*, and also with and in the glebe lands, and the mansion house. He also insisted on the decree made in the fifteenth year of the reign of *Charles the First*, as stated in his bill; and said, that he believed that one of the reasons why the vicarial tithes had not been again subtracted in that part of the parish called *Lowsby* *Lordship* was the almost immediately ensuing rebellion of *Oliver Cromwell*, and because the ancestors of the wife of the plaintiff *Fowke*, the then impropriators of the rectory and owners of part of the *Lordship of Lowsby*, were presbyterians, and had a meeting-house upon their estate where divine service was performed. He further insisted, for the reasons aforesaid, that he was entitled to all the small tithes arising within the vicarage and parish, and denied, that it appeared by any document, ecclesiastical survey, grant, deed, writing, or record, that the said yearly pension or salary of twenty nobles, or any other salary or pension had been, from time immemorial, due and payable by the impropriator or owner of the rectory to the vicar of the said vicarage, in lieu and satisfaction of all tithes arising in the parish.

The impropriator replied; the vicar rejoined; but no witnesses were examined on either side; and the causes came on to be heard on the seventh day of *November* 1783; when upon hearing counsel for all parties several days; and on reading an order, dated the twentieth day of *June* 1783, for liberty to prove exhibits at the hearing on the part of the plaintiff, viz.

three

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three several decrees, dated respectively the fourteenth of October, and the fifteenth, the nineteenth, and twenty-fifth days of June in the sixteenth year of the reign of *Charles the First*, made in a cause *Waybread v. Fowke* and others; the endowment of the vicarage of *Loweſby* without a date, from an ancient roll of institutions in the time of *Hugh Wells*, formerly *Bishop of Lincoln*, who began his episcopacy in the year 1209, from the diocese of *Lincoln*; a terrier of the vicarage of *Loweſby*, signed by *Thomas Smith*, vicar, and the two churchwardens, dated the thirty-first of October 1700; the return of the value of the vicarage, taken in pursuance of a special commission issued in the reign of *Queen Anne*; the depositions taken in the cause; six several receipts for synodals paid by the plaintiff as vicar of *Loweſby* to the *Archdeacon of Leicester* in 1776 and the following years; a receipt for procurations paid also by the plaintiff as vicar of *Loweſby* to the *Bishop of Lincoln* on his primary visitation in 1781; and on reading for the defendants the ecclesiastical survey taken in pursuance of a special commission issued in the reign of *Henry the Eighth*; the return of the possessions of monasteries, taken in pursuance of the said commission, issued as aforesaid; a copy of a grant from the said king in the thirty-sixth year of his reign to *John Dudley, Viscount Lisle*, *inter alia*, of the rectory of *Loweſby*; a copy of a grant from *Queen Mary*, in the first year of her reign, to *William Faunte* and *Henry Chamberlayne*, *inter alia*, of the said rectory; an extent issued against the lands, &c. of *William Faunte*, esquire, in the second year of the reign of *Queen Elizabeth*, and the inquisition returned thereon; livery of seisin sued out on the ninth day of July, in the tenth year of the said queen, on *William Faunte* arriving at the age of twenty-one years; an inquisition taken on the fourth day of July, in the thirteenth year of the reign of *Queen Elizabeth*, after the death of *Henry Faunte*; a decree of THE COURT OF WARDS AND LIVERIES, dated the fourth of February, in the thirty-fourth year of the reign of the said queen, in a cause wherein *William Browne* and wife, on behalf of *William Faunte*, were plaintiffs, and *Thomas Hunt* and *Francis Whiting*, vicar of *Loweſby*, were defendants; another decree of the said court, made in the thirty-sixth year of the reign of the said queen, in an information filed in the said court, in the name of her majesty's attorney general, by the procurement of *William Browne* in right of *William Faunte* against *Richard Penamore* and others; a copy of a grant from *Queen Elizabeth*, in the forty-fifth year of her reign, to *William Faunte*, of the possessions of the hospital of *Burton Saint Lazarus*; an indenture of bargain and sale, dated the first of December in the twenty-second year of *James the First*, from *W. Chamberlayne* and others to *T. Lane*; the depositions taken on behalf of the defendants in this cause, and also the depositions in the said cause of *Waybread v. Faunte*; an indenture of bargain and sale, dated the twenty-sixth of March

1740, from *Isaac Woolaston* to *T. Marriot*; an indenture, dated the twenty-third of *January* 1717, signed *J. Bennett* and others; another, dated the second of *October* 1705, between *J. Woolaston* and others and *J. Bennet*; and reading for the plaintiff in the original cause an inquisition taken in the thirty-fifth year of the reign of *Henry the Eighth*; the survey of *Pope Nicholas* taken in the year 1291; and upon hearing the reply, the said causes were ordered to stand over for the judgment of the court; and the said causes standing accordingly this day;

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THE COURT ordered the following issue, *to wit*, "Whether the plaintiff *Edward Wills Carr*, as vicar of the parish of *Loweby*, in the county of *Leicester*, is entitled to all the small tithes arising within the said parish." The plaintiff in equity to be plaintiff at law, and the occupiers to be defendants.

THE COURT further ordered the cross bill to be dismissed with costs.

The cause, on the petition of the vicar, came on to be reheard on the twenty-fourth of *January* 1786; but it was ordered to stand over, with liberty to the plaintiff to amend his petition, and to add the impropiator as a defendant to his bill; and both the petition and the bill were amended accordingly.

The amended bill stated, that the impropiator pretended to be entitled to all tithes whatsoever great and small within the parish; and that the vicar was entitled only to a yearly pension of twenty nobles, or six pounds, thirteen shillings, and fourpence for serving the cure; and charged, that the vicar was by virtue of the endowment entitled to all small tithes in the parish; and that his title thereto fully appeared from divers deeds, papers, and writings in the impropiator's custody or power, and particularly from a deed without a date made by *Hugh, Bishop of Lincoln*, and *William*, then dean, and the chapter of *Lincoln*, to the master and brethren of the hospital of *Burton Saint Lazarus* in the said county; a grant or impropriation made by *William Faunte*, heretofore owner of the said rectory impropriate; and divers other grants, deeds, and instruments concerning the said rectory and vicarage, and the tithes belonging thereto respectively; but that he refused to produce the same.

The impropiator denied, that the vicar was entitled by endowment, prescription, or usage to any of the small tithes, or that they had ever been paid to him or received by any former vicar thereof; and insisted, that the vicarage was never endowed with any tithes, or with a mansion house together with the glebe lands, but that the plaintiff was entitled only to a certain annual pension, salary, or sum of six pounds, thirteen shillings, and fourpence for the maintenance and support of the

MICH. TERM, TRINITY COLLEGE, CAMBRIDGE, *against* BARRINGTON.
25. Geo. 3.

Essex, 25th November 1784.

The impropriators of the parish of *Hatfield Broad Oak*, in *Essex*, are entitled to the great tithe of *the Park*, and its adjoining lands, and all other land in that part of the parish which is called *the Town Quarter*.

See *Wray v. Jocelyn*, vol. 3. page 204. and *Wray v. Barrington*, vol. 3. page 479.

THE plaintiffs were the masters, fellows, and scholars of *Trinity College*, in the university of *Cambridge*, and proprietors of the rectory of *Hatfield Broad Oak*, in the county of *Essex*; the defendant *Barrington* was proprietor of part of the lands called *the Town End Quarter*, and was in possession of part thereof; and the defendant *Webb* and others were tenants to *Barrington* of other parts of *the Town End Quarter*. The bill stated, that the plaintiffs were seised in fee of the rectory, and entitled to the tithes of corn, grain, hay, and other predial tithes arising therein, particularly in certain lands called *the Park* and its adjoining lands, containing two hundred acres, situated in a district of the parish called *the Town Quarter*; that *Barrington* was proprietor of *the Park* and its adjoining lands and of the other lands in *the Town Quarter*, except three acres thereof which belonged to *Sir T. Spencer, Bart.* and a small part thereof the property of *S. Chamberlayne*; that *Webb* and others had severally occupied lands lying in the said district, and had corn, grain, hay, wood, and other titheable things thereon, the tithes of which they had refused to pay; that the rectory had in the reign of *Queen Elizabeth* been let on lease by the plaintiffs predecessors to an ancestor of *Barrington*; that it had by regular renewals been continued to *Michaelmas 1780* in the *Barrington* family; that the defendant *Barrington* was proprietor of *the Park* and its adjoining lands in *the Town Quarter*, as well those which were in his own occupation, as those which were in the occupation of the other defendants; that the said other defendants, and all those who before them had occupied the said lands, had at all times paid the great tithes to *Barrington* or his ancestors, lessees of the said rectory; that not only *the Town Quarter*, but the whole or the greater part of the parish, to near nine thousand acres, had been formerly lands in *ancient demesne*; that the rest had constantly paid tithes to the impropriators; that no peculiar privilege of exemption could arise to the eight hundred and fifty acres contained in *the Town Quarter*, from the circumstance of their having been formerly *royal demesnes*; that the *demesne lands* of the crown, in the possession of a lay subject, were liable to the payment of tithes to the rector or impropiator of the parish, in like manner as other parochial lands; that no grant had ever been made of any portion of tithes within the said parish, nor any claim ever made thereto by the defendant *Barrington* till very lately, nor by any of his predecessors; that no exception of any part of the tithes of the parish had ever been inserted in any of the college leases to the predecessors of *Barrington*, or to him, or had ever been required to be inserted; that tithes of various matters in *the Town Quarter* had constantly been paid to the vicar of the parish;

rish ; that the tithes of corn, grain, and other great tithes had at all times been paid to *Barrington* as lessee of the rectory, and received by him as such, and in no other right whatsoever ; that the rectory of *Hatfield*, and certain lands therein, had been formerly parcel of the possessions of the priory of *Hatfield Regis* ; that the said abbey was one of the lesser abbies ; that upon the dissolution thereof the rectory and lands vested in the crown ; that thereby all privilege of exemption belonging to the said priory as a religious order, and all composition for tithes made personally with the prior and monks of the said priory, absolutely determined ; that the unity of possession of the rectory and lands was no discharge of tithes of itself, but that it was only made to operate as such by a favourable construction of the act of the thirty-first year of *Henry the Eighth*, and consequently that the said lands had come to the crown by the twenty-seventh of *Henry the Eighth*, with no privilege of discharge whatsoever ; that though the said rectory and lands had been afterwards granted to the *Abbey of Barking*, and had come again to the Crown by the thirty-first year of *Henry the Eighth*, yet at that time the unity of possession not having been from time immemorial in the abbess and convent of *Barking*, the same could not be construed a discharge of tithes, even by the operation of the thirty-first of *Henry the Eighth* ; and that the said defendants were therefore liable to pay tithes for the lands in their several occupations. The bill therefore prayed a satisfaction for all the tithes they had subtracted for thirteen months past.

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The defendant *Barrington* admitted, that the plaintiffs were seised in fee of the rectory, and entitled to some great tithes in the parish, but denied, that they were entitled to any tithes of corn, grain, hay, and other tithes of the lands called *the Park* or its adjoining lands, or any other lands in *the Town Quarter* ; and said, that the said quarter had immemorially been a part and known district or division of the king's forest of *Hatfield Regis*, and part of *the demesne lands* of the crown, and no part of the said parish ; that the said royal forest contained in ancient times the demesne lordship of *Hatfield Broad Oak* ; that he, the defendant, was proprietor of the said lordship and also of *the Park*, and all the lands in *the Town Quarter*, except as in the bill was mentioned ; that he held *the Park*, but no other lands ; that *the Park* had been mostly fed with deer, sheep, and a few other cattle ; that some part of it had been mowed and some sown with barley and oats : and he set forth the quantities and values of the said hay, barley, and oats ; and further said, that the other lands of which he was proprietor in the said district were in the several occupations of the other defendants. He denied, that any tithes had ever been payable to the plaintiffs for *the Park* and other lands in *the Town Quarter*, or any

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composition made to them for the same ; and said, that the limits of the said division of the forest called *the Town Quarter*, and the number of acres within the same were now about eight hundred and fifty, including lanes and wastes ; that the same, together with the lands mentioned to be the property of Sir T. Spencer and S. Chamberlayne, composed the whole of the said *Town Quarter*, but that he could not particularly set forth its boundaries. He further said, that the several lands comprised in *the Town Quarter* were ancient demesnes of Edward the Confessor, part of his royal forest of *Hatfield Regis*, and of the ancient manor of *King's Hatfield*, otherwise *Hatfield Broad Oak*, a part also of his said royal forest of *Hatfield Regis* thentofore containing nine thousand acres ; that the kings of *England* were seised thereof *jure corona* ; and that such lands were not subject to any tithes, except to the crown ; that in the time of *the Conqueror* no part of the forest had been enclosed, except the ancient demesne lands in *the Town Quarter* ; that the forest of *Hatfield Regis* had been divided into several districts which were then, and for a great number of years had been known by the names of districts, ends, or quarters, namely *Hatfield Heath Quarter*, otherwise *Manwood End*, *Wood Row Quarter*, otherwise *Bush End*, *Broomsend Quarter*, otherwise *Broomsb End District* or quarter, and *Town End Quarter* ; that *the Town Quarter* had immemorially constituted a distinct quarter of the forest ; that it had been anciently called, and in *DOOMSDAY BOOK* was called *Hatfield Regis*, otherwise *Broad Oak*, but how long it had been known by the name of *the Town Quarter* he knew not, but believed that the said divisions were very ancient, and were described in several ancient grants, papers, and muniments ; that none of the said districts, although inclosed, had been disforested until the reign of *Charles the First*, when the said royal forest, by virtue of a commission yet extant, dated the sixteenth year of his reign, was disforested, except as to certain parts thereof in the said commission mentioned, and which had never paid any tithes ; that previous to the dissolution of the priory of *Hatfield Regis*, otherwise *Hatfield Broad Oak*, the great tithes of several of the said districts, viz. *Manwood End*, *Hatfield Heath End*, *Woodrow End*, *Bush End*, and *Broomsb End* had belonged to the priory ; that at the dissolution they were in the occupation of the prior for the maintenance of the priory ; that by some lawful means they had been granted to the said prior and convent, either as proportions of tithes to be enjoyed therewith, or had been otherwise appropriated thereto, and were all and every the proportions of tithes which were enumerated as belonging to the rectory, or otherwise enjoyed by the said religious house at the time of the dissolution of the priory ; but that the tithes of *the Town Quarter* neither then, nor at any time, had been enumerated, or appeared to be part, or had ever belonged, or been reputed to belong, to the rectory, or to the prior of
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the priory aforesaid, but how or by what grants or means the priory had become entitled to the tithes of the said other districts, or to the said rectory, he knew not; that it appeared from the several leases and grants made of the rectory, and from other records, that the lands composing *the Town Quarter* never had been part of the rectory, or in charge to or chargeable with tithes to the same; but that it had been either immemorially free from tithes, as *demesne lands* of the crown, or a part of the royal forest (which could not be any parochial district, but set apart for royal exercise) or that if the same had been liable to the payment of tithes, yet that the tithes thereof belonged to THE CROWN alone, and not to THE RECTORY; that the great tithes of *the Town Quarter* were never granted to the priory, or to the predecessors of the plaintiffs, or if they ever were granted, they had been so granted as a partition of tithes only and distinct from the rectory, and as the distinct property of THE CROWN; that in the last case, they, together with the other possessions of the priory, on the dissolution thereof, had again come to THE CROWN; and that the right of THE CROWN to hold the said lands uncharged with tithes (if the same had been uncharged therewith) had been effectually conveyed to and vested by the crown in the persons under whom he, the defendant, claimed, or if THE CROWN had been entitled, yet that the same had been legally vested in the persons under whom he made title, by virtue of grants made to them by THE CROWN, or else that THE CROWN had legally ceded and released all such right to the said tithes to some or one of their grantee or grantees, under whom he, the defendant, made his title: and he submitted, that upon the true construction of the grant of the rectory to the predecessors of the plaintiffs, and under which they made title, and of the subsequent leases by them made to their lessees, that no such right had passed, or was intended to be passed, as to any tithes within *the Town Quarter*; and that neither he nor his tenants were accountable to the plaintiff for the same. He further said, that *Queen Mary*, by letters patent, dated the twenty-fourth of *July*, in the second year of her reign, granted to *T. Noke* and his heirs, under whom he derived his title, "all that her lordship or manor of *Hatfield*, otherwise *Hatfield Broad Oak*, with its appurtenances, formerly part of the possessions of the priory of *Hatfield*, and all and singular messuages, lands, &c." as in the said grant are mentioned, and had granted to them the same without any claim of tithe, or any annual rent whatsoever; that by virtue of the said grant the said tithes had been conveyed, as parcel of the said lordship, by the said queen, under contemplation of the statute of 27. *Hen.* 8. by which the same had been reserved in the crown, and so conveyed to *T. Noke* and his heirs, under whom he claimed. He further said, that *Henry the Eighth*, by letters patent, dated the fourth of *Decem-*

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ber, in the thirty-eighth year of his reign, granted to *Trinity College* the rectory and church of *Hatfield*, with its appurtenances, late belonging to the monastery of *Barking*, and the advowson, donations, &c. and right of presentation of the vicarage, and all his glebes, tithes, oblations, &c. with their appurtenances in *Hatfield* and *Broomsend*, and all the tithes of *Broomsend* in the occupation of *T. Jocelyn*, or his assigns, and all other tithes of the said rectory to hold for ever to the use of the said college; but that all other the possessions and revenues of the priory of *Hatfield Regis*, together with *the lordship*, still continued and remained in the seisin of THE CROWN, and no wise passed by the said letters patent so made to the college. He admitted, that the master, &c. sometime after such grant had demised the rectory and tithes thereof to *Sir F. Barrington* his ancestor, by the description of "all that their rectory and parsonage of the church of *Hatfield Broad Oak*, with all manner of tithes of *Hatfield Heath*, *Manwood End*, *Woodrowe*, and *Busb End*, and all tithes belonging to the said rectory, and their tithe barn, and all manner of tithe corn and grain, and all other tithes in *Broomsend*, except the gift of the advowson and patronage of the vicarage of the parish church of *Hatfield*, and which had been renewed until *Michaelmas* 1780; but that in no one of such leases, any tithes of *the Town Quarter*, *the demesne lands*, or of any other lands lying within the district, was inserted. He further said, that in 1656 a terrier had been delivered to *the College* by the then lessee, intitled, "Ejectment of such lands and tenements as belong to the rectory and parsonage of *Hatfield Broad Oak*;" and stating, "that there belongeth only unto the said rectory one tithe barn standing in the yard of *Sir John Barrington*, and the tithes of *Hatfield Heath*, *Manwood* and *Woodrowe*, *Busb End*, and the tithes of *Broomsend*, otherwise *Bruncho End*, sometimes demised to *Thomas Jocelyn, Esquire*, being all within the parish of *Hatfield* aforesaid, but no other lands or tenements whatsoever;" that he had found other terriers in 1664, 1674, and 1681, to the same effect; that they had been accepted by the college as perfect descriptions of the rectory; that it not only appeared that *the Town Quarter* was neither in charge to the rectory, or a part thereof, but also that by such terriers and lease of the tithes, the particular districts which composed the rectory out of which the tithes had been due to the plaintiffs, were described and the fine of the said leases accordingly rated thereto; and that neither he nor his ancestors had never comprehended *the Town Quarter* to be in the said leases. He denied, that the lands of which he was owner in *the Town Quarter* had at any time paid or been charged with any species of tithes to the vicar of the parish, or that he or his tenants had paid tithes of any titheable matters growing thereon, or any composition for the same, or that the lands in *the Town Quarter* had at any time been charged with the payment

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ment of any tithes to the rectory, or any composition in lieu thereof. He also denied, that any tithes of the produce of the said lands were due to the plaintiffs; and he submitted, that the non-payment thereof, added to the facts set forth, were satisfactory grounds to presume, that the said ancient lands called *the Town Quarter* were either not subject to tithes, or that the same belonged to him. He admitted, that the rectory had been let on lease by the plaintiff's predecessors in *Queen Elizabeth's* time to his ancestor, and had so continued by leases, down to *Michaelmas* 1780; and submitted, that by the said leases, &c. the tithes of *the Town Quarter* did not belong to the rectory, but were distinct from it, was extra-parochial, and that if any compositions had been paid they had been paid wrongfully; and said, if any receipts had been given, that the same had been given without his knowledge. He admitted, that the vicar had received tithes of wool, hops, and apples, but no other tithes in *the Town Quarter*, and tithe wood in *Broom's End*, but insisted, that such receipts had been only by the voluntary permission of the owners of the lands, the same being no part of the vicar's endowment; and that although the vicar should appear to be entitled to such peculiar species of tithes, it would not conclude him, the defendant, as to any claim which he had to the general tithes of the lands in *the Town Quarter*, or establish the plaintiff's title thereto, the said special claim of the vicar being totally a distinct demand from the plaintiff's claim then set up by the vicar upon some special circumstances, and not on any general right of small tithes, and no ways relating to the plaintiff's demand, or maintainable by grant or usage in support of the same. He admitted, that the rectory of *Hatfield Regis* had been one of the lesser monasteries; that it was dissolved in the twenty-seventh year of *Henry the Eighth*; that the rectory and lands had vested in THE CROWN; that they had been afterwards granted to the *Abbey of Barking*; that the *Abbey of Barking* had been dissolved by the statute of 31. *Hen. 8.* under which abbey he said, that he set up no claim, or by reason of any unity of possession; but contended that the lands in *the Town Quarter* had been in possession of the priory immemorially and uncharged with tithes; that such non-charge had been inherent to the land itself; that the king and his patentees thereof had been thereby entitled to hold the same so uncharged, and not by reason of any privilege which needed to have been preserved by any statute, but by virtue of the grants of the said manor, lands, and premises, or some of them as aforesaid. The defendant therefore finally insisted upon such several matters in his answer to the claim of the plaintiffs, so far as it respected such part of the said estates and lands, or any of them, and hoped, that neither he nor his tenants, occupiers of the said lands in *the Town Quarter*, should be compelled to account for any of the tithes demanded by the plaintiffs.

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The defendants, the tenants, denied, that the plaintiffs were entitled to receive any tithes of corn, grain, hay, or other great tithes of the lands in their occupation in *the Town Quarter*; and said, that they had never paid any tithes in kind to *Barrington*, but compositions in lieu thereof, at the rate of four shillings in the pound; that they had never paid any great tithes for the lands in *the Town Quarter* to the plaintiff, or any composition for the same; that they had always understood the said tithes to be the right and inheritance of *Barrington* and they referred to his answer; but they admitted, that they had paid, ever since they occupied their respective farms, the tithes of wool and apples to the vicar, but how or under what right he had received the same they could not set forth.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and upon hearing counsel for all parties, on the ninth day of *February* last; and reading the following proofs for the plaintiffs, viz. a copy of a grant, dated the fourth of *December*, in the thirty-eighth year of *Henry the Eighth* to *Trinity College, Cambridge*; a lease produced by the defendants from the college to the defendant, dated the twentieth of *January* 1761; and on reading for the defendants, viz. a lease, dated the eighth of *April*, in the thirty-seventh year of *Henry the Eighth*, to *Thomas Noke, of Hatfield Parsonage*; three terriers, dated respectively the second of *July* 1656, the fourth of *April* 1674, and the fourteenth of *April* 1781; the minister's accounts from the augmentation office of the twenty-eighth of *Henry the Eighth*; a copy of a grant, dated the twenty-fourth of *July*, in the second year of *Queen Mary* to *Thomas Noke*; a letter from *John Allen* to the defendant *Barrington*, dated the first of *April* 1752, and several depositions taken in this cause; the further hearing was adjourned over; when on reading for the plaintiffs several receipts, signed by *John Jessop*, from the eighth of *November* 1768, to the eighteenth of *December* 1781; some receipts signed *H. Wray*; a decree of this court, dated the twenty-fourth of *February* 1775, in a cause *H. Wray, v. Barrington (a)*; and hearing counsel further, and also the reply; the cause was ordered to stand over for the opinion of the Court.

MR. BARON EYRE this day delivered the judgment of the Court; and thereupon the deputy was ordered to take an account of what was due from the defendants to the plaintiffs for all the tithes subtracted by them, which had become due from each and every of them, during the thirteen months, as demanded by the bill, but without costs; the defendants

(a) See vol 3. page 479.

to pay to the plaintiffs what shall be found due to them upon such account.

JA. EYRE.
B. HOTHAM.
R. PERRY.

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BARON *against* BROOKSBANK.

Yorkshire, 13th December 1784.

MICH. TERM,
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THE vicar of *Wakefield*, in the county of *York*, claimed all the small tithes and dues which had arisen therein on the lands in the defendant's occupation for three years past, particularly the tithes of cabbages, potatoes, turnips, apples, pears, apricots, peaches, garden stuff, and honey.

The vicar of *Wakefield*, in *Yorkshire*, is entitled to the small tithes of the parish in kind.

The defendant said, that he occupied a public garden in the parish of *Wakefield*; and that a *modus* of two shillings and sixpence an acre for every acre of garden ground or ground set with potatoes, and so in proportion for a greater or less quantity of garden ground than an acre, in the town and parish of *Wakefield*, had been immemorially paid to the vicars of *Wakefield*, in lieu of all small tithes which might annually arise thereon; that he had annually paid such *modus* to the plaintiff to 1779 inclusive, and also sevenpence annually for his *Easter offerings*; that he had tendered the said *modus* for the said three years, and sevenpence *per annum* for his *Easter offerings*, which amounted to one pound, fifteen shillings, and sixpence; and that he was then ready to pay the same.

The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides; and upon hearing counsel;

THE COURT ordered the deputy to take an account of what was due to the plaintiff for all small tithes which had arisen in his garden grounds during the three years demanded by the bill, and also for *Easter offerings*.

HATTON *against* PELL.

Northamptonshire, 17th December 1784.

MICH. TERM,
25. GEO. 3.

THE plaintiffs, as impropriators in undivided moieties of the rectory of *Moulton*, in the county of *Northampton*, claimed the tithes of corn, grain, and great tithes, arising in the parish, particularly in certain old inclosed lands, called *Thorpe Lands*, containing upwards of two hundred acres.

The impropriator of *Moulton*, in *Northamptonshire*, is entitled to the great tithes of *Thorpe's Lands* in kind.

The defendant *Pells* said, that the rectory of *Moulton* extended over the whole parish, and comprehended, as part thereof, certain

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certain old inclosed lands, called *Thorpe Lands*; that the said lands had been, for many years, cultivated in such a manner, that no corn or grain were produced thereon; but that he had from 1765 converted them into tillage, and had reaped therefrom corn and grain; but that thirteen shillings and fourpence yearly, at *Old Martinmas*, had been immemorially paid to the vicar of *Moulton*, and six shillings and eightpence, upon *Old Holy Cross Day* yearly, to the churchwardens of *Moulton*, by the owner of the said lands, by way of *modus*, in lieu of all tithes whatsoever yearly arising in the said lands called *Thorpe Lands*.

The defendant *Stanton*, as vicar, insisted, that he was entitled to the small tithes arising in the parish; and disclaiming any of the great tithes, admitted, that he had received thirteen shillings and fourpence, at *Old Martinmas* yearly, from the owners and occupiers of *Thorpe Lands*, as a *modus*, in lieu of the small tithes only; but denied that such payment, to his knowledge, exempted the said lands from the payment of great tithes.

The plaintiffs replied; the defendants rejoined; and witnesses were examined; and upon hearing counsel for all parties; and upon debate of the matter;

THE COURT ordered the deputy to take an account of what was due for the tithes demanded by the bill; the plaintiffs to pay *William Stanton* forty shillings; and each party to abide by his own costs.

HILARY TERM
25. GEO. 3.

MAWBEY against EDMED.

Surry, 29th January 1785.

The impropriator of *Chertsey*, in *Surry*, is entitled to certain small tithes of the two fields called *Upper Lottworth* and *Lower Lottworth*, part of *Simple Marsh Farm*; of two acres and a half in *East Field*; and of thirteen acres in *East Mead*.

THE bill stated, that the rectory of *Chertsey*, otherwise *Cartsey*, was a rectory impropriate, with a vicarage endowed; that the said rectory had been, from time immemorial until the surrender thereof, appropriated to, and part of the possessions of the *abbey of Chertsey*; that the abbot and convent were seised thereof, and of all the tithes thereto belonging, from time immemorial until the year 1402, when the vicarage of the said church was endowed with part of such tithes; that the vicars of the said church had immemorially, until the year 1331, held and inhabited a certain mansion-house contiguous to the church, with the adjacent curtilage, and received divers oblations offered at the said church; that in the year 1331, the abbot and convent, by a certain endowment, confirmed to the then vicar and his successors the said mansion-house, curtilage, and oblations; but that the vicarage was not thereby endowed with any tithes whatsoever; that in the year 1402, the *Bishop of Winchester*, in whose diocese the said church is situate (with the consent of the abbot and convent), confirmed to the vicar and his

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his successors the said mansion-house, curtilage, and oblations, and thereby gave to the said vicar and his successors all manner of personal tithes arising from the work, business, merchandize, and trade of fishing of the parishioners, wheresoever they should fish in *the River Thames* and *the River Wye* (the fishing in waters being private property and in the pools and ponds of the abbot and convent excepted); the tithes of milk, curds, cheese, butter, eggs, and pigeons; a moiety of the tithes of geese, honey, wax, hemp, apples, pears, pot-herbs, onions, and garlick; and the tithe of all other titheable things growing in gardens, excepting the tithe of all kind of blade, whether the land was dug with the plough or foot; and except also the tithes, as well great as small, of the manor of *Chertsey*, *Hardwyche*, and *Rude*, which were therein mentioned to be the manors of the said abbot and convent, in whosoever hand, whether of the said religious persons or their farmers, the same should then be; and except all manner of tithes, as well great as small, then arising, or thereafter to arise, out of the township of *Croftord* and *Wodeham*, in the said parish, and except all oblations then arising, or to arise to the chapel of *Saint Anne on the Hill* or mount which was called *Eldebury*; all which tithes thereby excepted, and all other tithes, as well great as small, and the oblations within the said parish not hereby especially ascribed to the said vicar and his successors, the said bishop thereby declared his will to be, that the same should belong to the abbot and convent. The bill then stated, that the vicars had, from the year 1402, held, enjoyed, and received the said tithes and parcels or parts of tithes, and other things granted and confirmed to the vicars by the said endowment, and continued so to do until the final surrender of the abbey; that they had ever since continued to hold, enjoy, and receive the same, or had been or were entitled so to do; that the said abbot and convent, from the making such endowment to the time of the surrender of the abbey, continued seised of, and by themselves or their tenants or farmers, had received and taken all other the tithes and parcels or parts of tithes, as well great as small, yearly arising within and throughout the said rectory of *Chertsey*, or the titheable places thereof, or were well entitled to receive and take the same; that the abbey, being one of the greater abbeys, was surrendered into the hands of *Henry the Eighth*, on the nineteenth of *June*, in the thirtieth year of his reign, and by virtue of such surrender and the statute 31. *Hen. 8.* became vested in him; that the said rectory and the tithes thereof (except the tithes of *Olney Cake Mills*, which were granted out by the crown together with the said mills) continued vested in the crown from the time of the surrender until the seventh day of *November*, in the fifth year of *James the First*, when he, by letters patent dated the said seventh of *November*, granted to *Richard Lydall* and *Edmond Boslock*, and their heirs for ever, the said rectory of *Chertsey*, with all rights, members, and appurtenances,

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appurtenances, as stated in the bill ; that by virtue of divers mesne conveyances, the said rectory, with its rights, &c. had become vested in *Thomas Orby Hunter* ; that he, about 1764, sold and duly conveyed the same to the plaintiff, his heirs and assigns ; that the plaintiff ever since has been seised of the said rectory, with all its rights, &c. so granted as aforesaid ; that, as rector thereof, he was entitled to all the tithes and other appurtenances to the said rectory belonging ; that the said *Thomas Orby Hunter* did, in 1763, grant a lease of all the tithes to the said rectory to *William Edmead* and *John Martin*, deceased, their executors, &c. for fourteen years, to commence from the year 1762 ; that they held and enjoyed the same during their lives ; that the defendant *R. Edmead* was one of their representatives ; that the said defendant *Richard Edmead* had, ever since *Christmas* 1776, occupied *Simple Marsh Farm*, *Chertsey Mead*, and other land situate in *Hardwicke*, in the said parish of *Chertsey* ; that he rented the same of the other defendants, and also rented of the plaintiff another farm ; that upon the said farms and lands he had had wheat, barley, oats, rye, pease, beans, hay, clover, cows, sheep, calves, milk, lambs, wool, barren and unprofitable cattle, and various other tithes, as mentioned in the bill ; that the said lease expired at *Michaelmas* 1776 ; that the said defendant *Edmead* had in each year, since *Michaelmas* 1776, taken from the several occupiers in the townships of *Crotford* and *Wodeham*, in the said parish, sums of money as a compensation for their tithes, and had converted the same to his own use ; that he, the plaintiff, had, from time to time, requested him to set out and pay the said several tithes which he had on his said farms and lands since *Christmas* 1776 ; but that he had refused so to do, and also to pay over to him the money received by him as aforesaid. The bill then further stated, that the defendant *Morest*, as vicar of the parish, claimed the tithes arising from the three farms and lands in the defendant *Edmead's* occupation ; and that *the Bishop of Winchester*, as ordinary, disputed the plaintiff's right to the tithes of the said farms and lands. The bill therefore prayed, that the plaintiff's title to the tithes arising from the several farms aforesaid might be established against the defendants *the Franks's*, and against the defendant *Edmead*, claiming to be the lessee or tenant thereof ; that the defendant *Edmead* might account for the said tithes from *Christmas* 1776, and also for all money received since that time ; and that he might be decreed to pay what should appear due on such account.

The defendants *the Franks's* said, that the rectory of *Chertsey* was a rectory impropriate, with a vicarage endowed ; that the abbots and convent were, for a long time before, and to the time of the dissolution of the said abbey, seised of the rectory, and the tithes thereto belonging ; that it being one of the greater
abbeyes

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EDMEAD,

abbeys it was surrendered into the hands of *Henry the Eighth*; that the said rectory and the tithes thereof, as parcel of the possessions of the said abbey, thereupon vested in the crown; that the said rectory, some years ago, was vested in the ancestors of *T. Orby Hunter*; that he sold and conveyed the same to the plaintiff; and that the plaintiff was entitled to such tithes and appurtenances as belonged thereto: but they further said, that after the abbey vested in the crown, divers grants, leases, or demises, had been made and granted of the lands thereof; that amongst others, the farm and tithes of *Simple Marsh*, and some othertithes, had been sold and conveyed by *Lord Castlemain* to his, the defendant's, ancestors; that particularly by grants of *Queen Elizabeth* and *James the First*, dated the third of *February*, in the tenth year of his reign, to *F. Morice* and *F. Phillips* for ever, as in the answer was set forth, the same were held and enjoyed free from payment of tithes or composition to the rector; and that no claim had ever been made for the same till it was made by the plaintiff; that the indentures of bargain and sale of the said premises by *Lord Castlemain* to their ancestors, dated the twenty-fourth of *November 1738*, were inrolled in chancery touching *Simple Marsh Farm*; that by virtue thereof, the said farm was held and enjoyed free from payment of any tithes whatsoever; that they, by indenture dated the seventh of *December 1762*, demised to the defendant *Edmead's* father, his executors, &c. *Simple Marsh Farm*, and also the *Tithing Plots* belonging to the manors of *Walton* and *Pinford*, to him, as therein excepted, for twenty-one years, at two hundred pounds *per annum*; that the defendant *Edmead* then held the same; that the plaintiff had no right to receive the tithes thereof; that they had never been paid to any rector of the parish; but that they, *the Franks's*, were justly entitled to the tithes of the said three farms, and were strangers to the claim set up by the plaintiff.

The defendant *Richard Edmead* said, that the plaintiff, as rector, was well entitled to all tithes (save as to the lands leased to the defendant's father): and he set forth the names of the several farms and lands which he held of different persons, and which of them he paid tithes for, and which he did not; and also the quantities, qualities, and values of the titheable matters and things he had had thereon; and spoke as to the said three farms and lands as the other defendants had done; and said, that he occupied them as tenant; that they had always been held tithe free by the proprietors thereof; and that no tithes or composition had ever been paid for the same.

The defendant *Morest* said, that the rectory was impropriate, with a vicarage endowed; that in the endowment, as stated in the bill, there was an exception of divers tithes, and particularly of all manner of tithes, as well great as small, out of the townships of *Crotford* and *Wodeham*; and that he, as vicar,
was

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was entitled to a moiety of the tithes yearly arising in the parish, except as stated in the bill ; but that he did not claim any right or interest to or in the tithes arising from *Simple Marsh Farm*, and had only received annually from *Edmead* and his late father, two guineas as an *Easter offering*, and not in lieu of tithes.

The defendant *Chapman* answered to the like effect respecting the plaintiff's claim ; and said, that the defendant *Edmead* had, since *Christmas 1776*, held and occupied *Woodham Farm*, belonging to him, this defendant, in the bill, called *Barnett's Farm*, and which farm and lands were situate within the township of *Woodham*, in the said parish ; that *Simple Marsh Farm* lay in the township of *Hardwicke* ; that he knew not whether his said farm and lands were or were not subject to tithes, nor to whom the tithes thereof belonged, in case it was titheable.

The Bishop of Winchester said that he was a stranger to the matters in the bill, and claimed no interest, save as ordinary of the diocese of *Winchester*.

The plaintiff replied ; the defendants *the Franks* and *Edmead* rejoined ; and witnesses were examined on both sides ; and upon hearing counsel for all parties ;

THE COURT ordered the bill to be retained for a year, with liberty for the plaintiff to proceed at law touching the matters therein mentioned : costs and further directions to be reserved till after trial.

The plaintiff accordingly brought his action against the defendant *Edmead* ; and the jury found, " That the defendant
" *Richard Edmead* owed to the plaintiff *Sir Joseph Mawbey* the
" sum of one shilling parcel of the sum of one thousand pounds
" demanded for the tithes of two closes, called *Upper Lottworth*
" and *Lower Lottworth*, being part of a farm called *Simple Marsh*
" *Farm*, containing, by estimation, nineteen acres, more or less,
" and two acres and a half, more or less, of arable land in
" *Chertsey East Field*, and thirteen acres, more or less, of ground
" in *Chertsey East Mead*, all which premises lay in the parish of
" *Chertsey*, in manner and form as the said plaintiff *Sir Joseph*
" *Mawbey* had thereof complained against him." And the jurors assessed the damages of the plaintiff *Sir Joseph Mawbey*, by reason of the detaining the said sum of one shilling, parcel of the said sum of one thousand pounds, besides his costs and charges by him about his said suit in that behalf laid out and expended, to one shilling, and for his said costs and charges to forty shillings. And the said jurors further said, " That the said defendant
" *Richard Edmead* did not owe to the said plaintiff *Sir Joseph*
" *Mawbey* the residue of the said sum of one thousand pounds,
" in manner and form as the said plaintiff *Sir Joseph Mawbey*
" had thereof complained."

The cause came on again on the twenty-ninth of June 1785; and upon hearing counsel; and reading the decree and *postea*:

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against
EDMEAD.

THE COURT ordered the bill to be dismissed as against *the Bishop of Winchester, A. Chapman, and C. Mereft*, with costs.

THE COURT further ordered the deputy to take an account of what was due to the plaintiff for the tithes of the two closes called *Upper Lottworth* and *Lower Lottworth*, of the two acres and a half of land lying in *Chertsey East Field*, and of the thirteen acres of ground lying in *Chertsey East Mead*, in the *postea* mentioned.

THE COURT further ordered the bill to be dismissed, as to the residue of the matters claimed thereby, without costs; and, by consent, that there be no costs in equity on either side as between the plaintiff and the defendants *Edmead and Franks*.

WARREN against FISHER.

Warwickshire, 3d February 1785.

HILARY TERM
25 GEO. 3.

THE rector of *Kenwarton*, in the county of *Warwick*, claimed the tithes, both great and small, arising in the parish, particularly of cows, mares, ewes, sows, calves, colts, lambs, pigs, poultry, sheep depastured after shearing and sold fat before the next shearing time, and the agistment of barren and unprofitable cattle.

The rector of *Kenwarton*, in *Warwickshire*, is only entitled to certain *modus* in lieu of the tithes of milk, calves, barren cows, and colts, in the township of *Kenwarton*.

The defendants admitted, that they occupied farms in the township of *Kenwarton*; but denied that the rector was entitled to receive the tithes thereof in kind; and insisted on a *modus* of fivepence for every cow and calf fed in the hamlet, when the calf was calved upon the land, *viz.* fourpence for the calf, and one penny for the cow, on the next *Old Midsummer Day* after the cow had calved, let her age be what it might, or so soon after as the same was demanded, in lieu of all tithes in kind of the calves and of the milk of such cows respectively; ALSO one penny for each barren cow of three years or upwards fed in the hamlet, on the *Old Midsummer Day* next after such cow became barren, or as soon after as the same was demanded, in lieu of all agistment of tithe of such barren cow; ALSO, one penny for every colt foaled upon the land, payable as aforesaid, in lieu of the tithe of such colt.

The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides; and upon hearing counsel; and reading an order to prove exhibits *viva voce*, *viz.* two several terriers of the glebe of the rectory of *Kenwarton*, dated respectively the eighteenth of *October 1585* and the third

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of *June 1714*, from the registry of *the Bishop of Worcester*; the deposition of *John Kaye*; and two exhibits, signed *J. Warren*, dated the twelfth of *June 1775* and the fourth of *May 1778*; and also on reading, for the defendants, several receipts for privy tithes; and several depositions; and on debate of the matter;

THE COURT ordered, by consent, the deputy to take an account, without costs on either side, of what was due for tithes of milk, calves, agistment of barren cows, and colts, on the foot of the *modus*; and for the tithes of the several other titheable matters demanded by the bill in kind; the defendants to pay the plaintiff his costs.

EASTER TERM
25. GEO. 3.

WILSON against PAULETT.

Middlesex, 14th April 1785.

The impropriator of the rectory of *Hampstead*, in *Middlesex*, is entitled to the great tithes in kind for the lands called *the Little Cods, the Great Cods, the Old Ploughed Field, and Frankland's Fields*, supposed to have been formerly *Kilburne Woods*, and part of the possessions of the hospital of *St. John of Jerusalem*, in *England*.

THE plaintiffs, as executors of the last will and testament of *Margaretta Maria Jones*, deceased, stated, that *John Maryen*, clerk, being seised in fee simple of the rectory of *Hampstead*, in the county of *Middlesex*, and entitled to all the great tithes thereof in kind, by will, dated the thirtieth of *March 1757*, devised the same to *Margaretta Maria Waller* for her life; that *John Maryen* died the seventeenth of *November 1760*, without altering his will; that *Margaretta Maria Waller* intermarried with *John Jones*; that she previous thereto, by indentures of lease and release dated the twentieth and twenty-first of *February 1761*, conveyed the tithes of the said rectory to *William Fellows*, in trust for her own use; that, by virtue of the said settlement, the said *Margaretta Maria Jones* was entitled to receive the said tithes in kind; that the defendant *Paulett*, from *March 1761*, had held lands within the said rectory, and had had corn, grain, and hay, yearly thereon, the tithes of which he had refused to pay. The bill therefore prayed an account with the said *John Jones* and his wife for such tithes, and payment of what should appear to be due thereon.

The defendant *Paulett*, as to so much of the bill as sought a discovery and account of the titheable matters he had had in the lands called *the Little Cods, the Great Cods, the Old Ploughed Field, and Frankland's Field*, containing thirty-one acres, one rood, and five perches, PLEADED IN BAR, that *Henry the Eighth* was, at or before the time of the execution of the indenture of bargain and sale after mentioned, seised in fee, in right of his crown, of the scite, circuit, and precinct of the late priory, monastery, or house of *Kilbourn*, and other hereditaments in the bargain and sale mentioned; that being so seised in and by a certain indenture of bargain and sale inrolled in chancery, dated the sixteenth day of *May*, in the twenty-eighth year of *Henry the Eighth*,
made

made between the said king of the one part, and *Sir William Weston, Knight*, prior of the hospital of *Saint John of Jerusalem*, in *England*, and his co-brethren, of the other part, as fully set forth in the plea, it appeared, that the several lands occupied by the defendant were formerly *Kilbourn Wood*, and parcel of the lands given or granted and confirmed by the statute of the twenty-eighth year of *Henry the Eighth*, an act for confirming the exchange of lands between the said king and the prior; that at the time of the dissolution, by an act made in the thirty-second year of *Henry the Eighth*, intituled, "An Act concerning the Possessions of the Hospital of *Saint John, &c.* to be hereafter in the King's Hands and Disposition of the said Priory or Hospital," that the scite, lands, and grounds thereto belonging, were, and long before had been, and still ought to be, held, occupied, and enjoyed, exempt, freed, and discharged of and from all and all manner of tithes whatsoever; and therefore he demanded the judgment of the court, whether he should make any other answer to such parts of the bill.

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As to other parts of the bill the defendant said, that, for what he knew to the contrary, the said *Maryen* might be seised in fee simple of the rectory, and entitled to divers great tithes in kind therein; but he insisted that, for the reasons aforesaid, he was not entitled to great tithes of the lands held and occupied by him. He admitted, that he occupied *the Hill Field, the Mead, the Great Pitts, the Little Pitts, and the Orchard*, in the whole about twenty-seven acres; and said, that they were copyhold, and that the plaintiff was entitled to the great tithes thereof; that they had not been taken in kind; but that he had made a satisfaction for the same. He also admitted, that he occupied *the Little Cods, the Great Cods, the Old Ploughed Field, and Frankland's Fields*, being thirty-one acres, one rood, five perches; and said, that they were freehold; that he occupied the same tithe free; and insisted he had a right so to do. He further said, that the four last-mentioned closes, called or known by the name of *Kilbourn Wood*, were parcel of the possessions of the hospital of *Saint John of Jerusalem in England*, and were, as such, discharged from tithes. He further said, that the other five copyhold closes, and the said four freehold closes, were all the land he held and occupied, except three acres of meadow, for which he paid tithe; that he did not pretend there was any *modus* or customary payments in lieu of tithes for the copyhold lands; but, on the contrary, that he had always been willing to pay tithes in kind, or to make a satisfaction for the same.

The plea was argued on the fourth day of *June* 1784, and over-ruled; and on exception to the answer, the defendant put in further answer; and said, that he could not set forth the quantities, qualities, and values of his titheable matters and things.

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against
PAULETT.

The plaintiffs replied; the defendants rejoined; and witnesses were examined on both sides; and upon hearing counsel and on debate of the matter;

THE COURT ordered an account be taken of what was due for all and singular the titheable matters and things which had arisen on the lands occupied by the defendant in the parish of *Hampstead*, and which he pretended were exempted from the payment of tithes, during the time demanded by the bill, but without costs.

THE COURT further ordered the bill, as to those lands for which the defendant had already paid tithes, to be dismissed, but without costs.

The deputy made his report, dated the third of *July* 1786, and on the seventeenth of the said month, it was ratified and confirmed, and the defendant ordered to pay fifty-five pounds, two shillings reported due for the tithes of the respective land in the report mentioned.

EASTER TERM
25. GEO. 3.

LEWIS against GIFFORD.

Wiltshire, 25th April 1785.

The vicar of *Charlton*, in *Wiltshire*, is entitled to the tithes of garden stuff, of eggs, and of the agistment of sheep throughout the thirty-six yard lands of which the parish consists.

THE vicar of *Charlton*, in the county of *Wills*, claimed the small tithes arising in the parish from the thirty-first of *December* 1777, particularly garden stuff, eggs, and the agistment of sheep.

The defendant said, that no agistment tithes of sheep had ever been paid to the vicar previous to the plaintiff's institution; and that if he could make a good title thereto, one farthing a-head *per* month would be found, on consideration of the nature of the flocks and the sort of profit made from them, which is confined to the manure proceeding from their being folded or penned on their arable land, to be more than the full value of the agistment tithes thereof; but that if one farthing a-head *per* month was not sufficient, yet they could not pay him the said tithe, for that the parish of *Charlton* consisted by repute of thirty-six yard lands; that the vicarage was endowed with the tithes of no more than eleven of the said yard lands; that the rest belonged to the impropriator; and that they had been forbid by the lessee of the rectorial tithes to pay the same to the vicar; so that it would be unsafe for them to pay to the plaintiff the said agistment tithe, till such time as the question of right between the rector and the vicar was adjusted and determined; and that it was solely on account of their having received such notice, that they did not also make a tender to the plaintiff of all the tithes that were due to him. The answer further stated, that as to the tithe of garden

garden stuff and eggs, it had been generally understood in the parish, that twopence a yard land was what had been the usual payment for many years.

Lewis
against
Gifford.

The plaintiff replied ; the defendant rejoined ; and witnesses were examined on both sides ; and upon hearing counsel on both sides ; and on reading the proofs ;

THE COURT ordered the deputy remembrancer to take an account of what was due for the tithes demanded by the bill.

CROFT *against* MASON.

TRIN. TERM,
25. GEO. 3.

Yorkshire, 13th June 1785.

THE vicar of *Gargrave*, in the county of *York*, claimed the agistment tithes of barren and unprofitable cattle at the following rates, *viz.* for each horse-gate, five shillings a week from *May Day* to *Michaelmas*; for each cattle-gate, two shillings and sixpence a-week from *Michaelmas* till *Martinmas*; in pasture land, for each horse and cattle-gate, two shillings a-week; but in that eddish each horse-gate is worth for that time five shillings a-week, and each cattle-gate, four shillings a-week; from *Martinmas* to *Lady Day* each horse and cattle-gate is worth one shilling and sixpence a-week; and from *Lady Day* to *May Day* each horse-gate is worth four shillings a-week, and each cattle-gate is worth two shillings and sixpence a-week; and stated, that the said cattle-gates were computed and paid for within the said township as follows: each *English* cow and ox makes a gate, as also four sheep, or three ewes and three lambs; and that three *Scotch* cows or oxen are considered as equal to two gates.

The vicar of *Gargrave*, in *Yorkshire*, is entitled to the agistment tithes of barren and unprofitable cattle in the township of *Gargrave* in kind.

The defendants *Mason* and others admitted, that the plaintiff was vicar of the parish, and entitled to the tithes of hay, clover, and hay grass, but denied that he was entitled to the tithe of agistment, or the small tithes from the lands in their occupation; for that they had compounded and paid the plaintiff for all small tithes, except for the tithe agistment; and they set up a custom in the township of *Gargrave*, for the owners and occupiers of the lands in their respective occupations to pay the vicar yearly at *Easter*, or as soon after as demanded, twopence halfpenny for every renewed milch cow, or milch cow which had newly calved, as a *modus* in lieu of the tithe of agistment of such milch cow; and twopence for every other cow and barren and unprofitable beast depastured upon the said lands, in lieu of the tithes for the agistment of such other cow, barren, and unprofitable cattle; and averred, that they were willing to pay

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against
MASON.

the same ; and prayed, that they might have the same benefit, with respect to the said *modus*, as if they had pleaded the same in bar.

The defendants *T. Ayle* and others said, that they were trustees for *Trinity College, Cambridge*, of two thirds of the rectory, as in their answer was stated.

The defendant *J. B. Garforth* said, that he was seised of one third part of the rectory which had been for several years let to different tenants ; and they all craved leave to refer to such proof as the plaintiff should be able to make, with respect to what tithes and dues he was entitled to as vicar of the parish.

The plaintiff replied ; the defendants rejoined ; and witnesses were examined ; and upon hearing counsel for all parties ; and reading the proofs taken in the cause ; and, by consent, a copy of an endowment of the parish church of *Gargrave*, dated at *York*, the sixteenth of the *kalends* of *April*, in the year of Our Lord 1321 ; the tithing or *Easter books* of the vicars of *Gargrave*, beginning in the year 1719 and ending 1778 ; a certificate of the plaintiff's conforming according to the rites of the church of *England*, to the duties thereby required previous to his institution to the vicarage, dated the twelfth of *July* 1778, signed *H. Johnson*, officiating minister and others ; and on debate of the matter ;

THE COURT ordered the bill, as against *Ayle* and *Garforth*, to be dismissed with costs.

THE COURT further ordered the defendant *Mason* and others to account for the tithe of agistment of all and every barren and unprofitable beast which they had respectively depastured upon the lands in their respective occupations within the said township, during the time the plaintiff had been vicar of the parish, with costs.

MICH. TERM,
26. GEO. 3.

DELVES against LORD BAGOT.

Staffordshire, 21st November 1785.

The vicar of *Bromley Abbots*, in *Staffordshire*, claims the tithes of hay, agistment, and all small tithes arising in the district called *Bagot's Bromley*, excepting the tithes of wool and lambs.

THE bill stated, that the plaintiff was, in the year 1768, collated by the bishop of *Litchfield* and *Coventry* to the vicarage of *Bromley Abbots*, in the county of *Stafford*, and had ever since been lawful vicar thereof ; that the parish of *Bromley Abbots* had immemorially consisted of two districts called *Bagot's Lordship*, otherwise *Bagot's Bromley* and *Paget's Lordship*, otherwise *Paget's Bromley*, otherwise *Abbott's Bromley* ; that he, as vicar, was entitled to the tithes of hay and all small tithes in kind, except those of wool and lambs, yearly arising therein, par-

particularly to the tithes of agistment and the tithe of hay in *Bagot's Lordship*; that the defendant *Lord Bagot*, and the defendants *William Blackwell* and *William Ward* had severally occupied, during the plaintiff's incumbency, lands in *Bagot's Lordship*, exclusive of two large quantities of ground antiently inclosed and used by *Lord Bagot* and his ancestor's as A PARK and as A RABBIT WARREN, neither of which formed any part of the plaintiff's present demand; that they had yearly made hay from their said lands, exclusive of the said ancient park and warren; that *Ward* and *Blackwell* had depastured barren and unprofitable cattle, particularly sheep which had been fatted and sold, or otherwise removed out of the parish before shearing time; and that they had refused to pay the tithes thereof, on a pretence that their lands were exempt from the payment of tithes by some agreement. The bill then averred, that no such agreement ever existed, that no mention was made thereof in any writing or record, save in a terrier of the parish, in the episcopal registry of the diocese, dated in the year 1714; that in the said terrier it is expressed to be a *pretended agreement*; and that if any such agreement existed, it was insufficient to deprive him of his right to tithes in general, or to the tithes of hay and agistment in particular. The bill further charged, that none of the farms in the occupation of the defendants were, in the state now used, *ancient farms*; that divisions had been made therein, or in some of them within memory; that the lands, whereof the same formerly consisted, had been distributed between two, three, or more tenants; that considerable quantities of land from the common, or waste lands, or the town-fields had been inclosed and added to some of them; and that they had been often mowed since the plaintiff became vicar; that a part of one of the said farms had of late years been disannexed therefrom and added to the park called *Bagot's Park*; that such lands so added to the park had been in each year, since he became vicar, mowed for hay and depastured with deer, or young, or other unprofitable cattle; that a considerable quantity of land had of late years been added to *the Warren*; that rabbits had been bred, kept, and killed on all or most of the land so added promiscuously within the said ancient warren, whereby considerable profit had yearly arisen to *Lord Bagot*; that although he, the plaintiff, is not entitled to any tithe, in respect of the rabbits bred, kept, and killed in *the Warren*, he was entitled to tithes in respect of the rabbits bred and kept on the lands so of late years added to *the Warren*; that *Lord Paget*, the patron of the vicarage, insists on the several matters before charged, but refuses to join in this suit. The bill therefore prayed, that *Bagot*, *Ward*, and *Blackwell* might account for the agistment of all sheep fatted, sold, and removed out of the parish before shearing time; for the agistment of all other barren and unprofitable cattle, except on *the Park* and *the Warren*, particularly the

DEVELOP
against
LORD BAGOT.

and excepting the tithes of that land which antiently constituted *Bagot Park* and *the Rabbit Warren*; and states, that the defendants agisted sheep between *Shearing day* and *Shearing day*;

that the ancient farms in the possession of defendants were not exempted from tithes;

that the size and situation of them had been changed;

that lands from the commons and the open fields had been inclosed and added thereto;

that part of the said farms had lately been added to *the Park* and *the Warren*; that hay had been made on such new lands in *the Park*, and the rabbits kept and killed on such new lands in *the Warren*; that he, as vicar, is entitled to the small tithes of the produce of such new lands.

DELVES
against
LORD BAGOT.

agistment tithes of deer and cattle fed on the land which had within memory been added to *the Park*; for the tithe of all rabbits killed on the lands which had within memory been added to *the Warren*, or for the tithes of their feeding thereon; and for the tithe of hay, except on *the Park* and *the Warren*; and pay what should appear due on such account.

The defendants admit that they occupy lands in *Bagot's Bromley*;

that they had mowed hay and depastured sheep thereon; and say,

that the remainder of the grass thereof had been eaten by working oxen and waggon horses; that no tithes in kind of hay was payable by residents in the parish, particularly in *Bagot's Bromley*;

but a *modus* of 3s. 4d. a year at *Easter* in lieu of the vicarial tithes of *Bagot's Park*; 1s. in the pound rent, by non-residents, in lieu of the tithes of land whether mowed or grazed;

2d. a days math by residents, except in *Bagot's Bromley*, in lieu of agistment tithes;

and certain small sums by residents in *Bagot's Bromley* in lieu of land mowed or grazed, except in *the Park*;

and other small sums in lieu of

The defendant *Lord Bagot* admitted, that the plaintiff was vicar of the parish, and entitled to such tithes as belonged to the vicarage, but denied, that he and his predecessors had received in kind all small tithes arising therein, except those of wool and lambs. He said, that he occupied in *Bagot's Lordship* certain lands, exclusive of *Bagot's Lands*, as particularised in his answer; and he set forth an account of the number of sheep and unprofitable cattle he had depastured thereon, and the quantity of hay he had mowed in the lordship of *Bagot's Bromley* in the said years; and said, that the rest of the grass on the lands in his occupation had been eaten by working oxen and waggon horses, for the agistment of which no tithes were due. He also said, that no tithes in kind were payable for any lands mowed or depastured in *Bagot's Bromley* by persons resident in the parish, or for lands mowed in any other part of the parish; for that there had been immemorially paid to the vicar, in lieu of all vicarial tithes arising within *Bagot's Park*, three shillings and fourpence at *Easter*; in lieu of tithe hay, agistment, and all other vicarial tithes arising on all lands in the parish, mowed by persons not inhabitants thereof, twelvepence in the pound of the annual rent or value of the land mowed or grazed; and in lieu of tithe hay and agistment on all lands in the parish, except in *Bagot's Lordship*, mowed or grazed by inhabitants therein, twopence for every day's math at *Easter*; that in lieu of the tithes of hay or agistment arising on all lands, except *Bagot's Park*, within that part of the parish called *Bagot's Lordship*, mowed or grazed by inhabitants of the parish, there had been immemorially paid by such inhabitants several small yearly sums by way of *modus*es or compositions; that several other small yearly sums by way of *modus*es had been immemorially paid by persons residing in the parish, in lieu of the tithes of calves, colts, pigs, and other vicarial tithes; that the said several payments had been immemorially and invariably paid, except that in some instances the plaintiff had without the defendant's consent prevailed on some of the occupiers to vary those payments; and that he, the defendant, claimed the benefit of such several *modus*es or ancient compositions, as far as the same respectively extended in bar of any demand of tithes against him or his tenants. He further stated, that no tithe hay or agistment had ever, in the memory of man, been paid in kind to any vicar of the parish, either by tithe calves, colts, pigs, and other small tithes; that no tithe hay had ever been paid

persons

persons resident or not resident therein ; but that if the one shilling in the pound payable by non-residents should not be adjudged a good *modus*, he was ready to pay the full value of his tithe hay and agistment. He further insisted, that every part of the lordship of *Bagot's Bromley* was covered by some *modus* in lieu of tithe hay and agistment of such lands as were in the occupation of residents. He further said, that there was a tradition in the parish that some very ancient agreement in writing had been made between his ancestors and the abbots of *Burton upon Trent*, by which the payments before mentioned, in respect of small tithes, except of wool and lambs, of *Bagot's Lordship*, and the said several exemptions, were fixed and ascertained, but that he never saw the said agreement ; that if any such agreement had been made it must have been beyond the time of memory ; that the abbots of *Burton* were owners of the appropriate rectory of *Bagot's Bromley* long before the reign of *William the Conqueror* ; that his ancestors were lords of the said manor or owners of the greater part thereof ; that they had a mansion house in which they resided before the said reign ; and that the said agreements were originally good, the several payments before-mentioned having been invariably made.

The defendant *W. Blackwell* said. that he occupied lands in *Bagot's Lordship*, as tenant to *Lord Bagot* ; and he set forth the number of sheep he had depastured thereon, and the value of the tithes thereof ; an account of the grounds he had mowed ; the quantity of hay produced therefrom ; and the value of the tithe thereof ; and said, that he occupied *Broom Farm* ; but that there had been immemorially paid by the tenant thereof, resident within the parish to the vicar, in lieu of all tithes of hay and agistment arising thereon, the yearly sum of fourpence at *Easter* ; and that he had always been willing, and had offered to pay the same.

The defendant *Bagot*, by his further answer, said, that the parish was divided into two districts, as stated in the bill ; that most of his farms were not in the state in which they had formerly been used ; that small alterations had been made in most of them, and certain quantities of land taken from the common fields (but not from waste lands) and inclosed and added thereto ; that part of the said farm had been added to *the Park* ; and he set forth an account of the said farms at the time the *moduses* were made out, and of the several variations and additions that had been made to *the Park* and the *Warren* ; and insisted, that as no tithe hay or agistment, or any composition for the same, except such customary payments as were mentioned in the answer, had, within the memory of man, been rendered to the vicar for lands in the lordship of *Abbott's Bromley* or agistment had ever been paid in kind for the lands in the other districts called *Page's Bromley*, but certain *moduses* in lieu thereof,

DELIVER
against
LORD BAGOT,
that every acre
of *Bagot's Brom-*
ley was covered
by some *modus* in
lieu of tithe hay
and agistment of
lands in the oc-
cupation of re-
sidents ;

and that the said
moduses are good
from their anti-
quity ;

that the residents
upon *Broom*
Farm, in *Bagot's*
Bromley had im-
memorially paid
4d. yearly at
Easter, in lieu of
tithe hay and a-
gistments there-
of ;

that several of
the ancient farms
had been enlarg-
ed in the man-
ner as stated in
the bill, except,
that the addition
was made from
the common-
fields, and not
from the wastes ;
that parts of the
said farms had
been added to
the Park and *the*
Warren ;

that no tithe hay

DELVES
against
LORD BAGOT.

and 3d. a day's
math by resi-
dents, in lieu of
tithe hay and a-
gistments ;
and 1s. in the
pound rent by
non residents ;
that all lands not
covered by a
particular *modus*,
were covered by
a *parochial modus*;
that no tithes
were payable for
deer or rabbits
whether in *the*
Park, the War-
ren, or in *the*
new lands added
thereto ; that the tithes of turnips taken out of the parish, and clover seed are due to the im-
propriator.

that 1s. and 1s.
3d. and 2d.
and 1s. making
together 4s. had
been immemo-
rially paid by the
occupier of land
in *Bagot's Brom-*
ley, in lieu of tithe
hay and agist-
ment of such
land.

The proceedings
revived.

The impropria-
tor insists, that
the vicar is only
entitled to *mo-*
dius in lieu of
tithe hay and a-
gistment ;
that he is not
entitled to the
tithes of wool or
of lambs ; and that

it ought to be presumed, that the vicar was not en-
dowed with any such tithe, but only with such customary
payments. He further insisted, that no tithe hay or agist-
ment had within memory been paid in any part of the pa-
rish ; but that on the contrary persons resident therein,
whose lands in *Abbott's* or *Paget's Lordship* were not covered by
any particular *modus*, had immemorially paid twopence a day's
math in lieu of tithe hay and agistment, and non residents one
shilling in the pound according to the rent ; and that therefore
if any of his lands should appear not to be covered by a *modus*
in lieu of tithe hay and agistment, such general *parochial modus*
ought to take place in respect of such lands. He also insisted,
that no tithe was due to the plaintiff, in respect of deer or rab-
bits, whether the same were depastured in *the Park* or *the*
Warrens, or on the lands recently laid thereto ; and he sub-
mitted whether the tithe of turnips, when the same are taken
out of the parish, and also the tithe of clover seed, are due to
the vicar, or to the lay impropriator of the rectory, the vicar
not having been anciently endowed therewith, and not having
anciently received any such tithe.

The defendant *W. Ward* admitted, that he held lands be-
longing to *Lord Bagot*, within *Bagot's Lordship* ; and he set forth
the particulars of them, and the titheable matters he had had
thereon ; and insisted on the *moduses* before mentioned in lieu
of the tithes thereof ; and also that one shilling, and one shilling
and tenpence, twopence, and one shilling, making together four
shillings, had, for time beyond memory, been due and pay-
able by the owners or occupiers of the lands within the said
parish, in his occupation, to the vicars for the time being, or
to the persons entitled to the tithe hay and agistment of such
lands, in lieu of such tithes, and that the same had been duly
rendered and paid ; the particulars of which payments, and
the lands for which they were payable he set forth in his
answer.

The defendant *William Ward* died, and the bill was revived
against his widow and administratrix, and she appeared.

The defendant *Lord Paget* said, that he was impropriator of
Abbott's Bromley ; that the plaintiff was vicar thereof ; that the
vicars had been used to receive certain payments in lieu of tithe
hay in kind, and some small tithes ; that he was not entitled
to the tithes of wool and lambs ; and that he, as lay impropria-
tor, was entitled to all such tithes arising therein, as the vicar
was not entitled to by usage or endowment, particularly to the
tithe of turnips, and the seed of clover.

that he, as impropriator, is entitled to the tithes of turnips and clover seed, as the vicar
was not endowed therewith.

The

The plaintiff replied ; the defendants rejoined ; and witnesses were examined, as well on the part of the plaintiff, as on the part of the defendants *Lord Bagot, Blackwell, and Ward*, and the cause came on to be heard on the fourth day of *February* 1785 ; and upon hearing counsel for all parties for several days ; and reading the proofs ; and refusing to read a copy of a list of *moduses* relating to the parish of *Abbott's Bromley*, on behalf of the defendants, it not appearing that enquiry had been made for the original ; and reading the twenty-third folio of a book marked A, and proved in the cause ; the answer of the defendant *Ward* ; folio four of a book marked B, intitled "*George Proctor's Farm and George Goodwin's Farm*," and page five of the said book, intitled "*Edward Walker's Farm and Richard Allen's Farm*;" and refusing to hear read an exhibit of *J. Title and William Tenant*, on behalf of the defendants, it not being annexed to the deposition of *Robert Harvey*, who proved the same (as also the other exhibits) nor its contents stated therein ; but on reading the said exhibit by consent ; and also reading exhibit L, intitled "*Abbott's Bromley, Easter roll entries*;" exhibit "*R, Easter Roll 1736 Entries*;" exhibit T, being a TERRIER of the glebe, &c. belonging to the vicar of *Abbott's Bromley*, dated the first of *September* 1698 ; exhibit A, being a terrier relating to the said parish, dated the eleventh of *October* 1701, signed by the then vicar and churchwardens thereof ; also two other terriers, dated the twenty-sixth of *May* 1714, and the seventh of *May* 1711 ; and reading an order of this court made herein, dated the twenty-ninth day of *January* 1781, whereby the said defendants tendered to the plaintiff various sums for tithes, with costs to be taxed to that time ; and several others proofs in the cause ; and reading the deposition of *William Mott* ; and, by consent, a copy of the survey from THE FIRST FRUITS OFFICE, taken in pursuance of an act of parliament, passed the twenty-sixth year of *Henry the Eighth*, under the title, "*Stafford, Decanatus in Tamworth, et Tutbury, Bromley Abbatis, vicaria appropriata abbati et conventui de Burton, Thom. Wilson, vicarius, ibidem habet et percipit sibi et annuatim de terris glebalibus, decimis feni, lini, et rotulo paschali, cum oblationibus communibus annis, 1015. 8d.*;" the defendant *William Ward's* answer, and the schedule thereto ; and on the titheable matters in *Cramersley Meadow* being admitted by the defendant's counsel ; and reading several other proofs taken in the cause ; and a terrier relating to the said parish, dated the nineteenth of *June* 1772 ; and on full debate of the matter ;

THE COURT ordered the bill, as against the defendant *the Earl of Uxbridge*, and so far as the same sought an account from *Lord Bagot* for the tithes of *deer and rabbits*, to be dismissed with costs.

DEAVES
against
LORD BAGOT:
The cause
heard.

The bill, as to the
tithes of *deer*
and *rabbis*, dis-
missed with
costs.

THE

The tithes of hay, agistments, and other matters which had arisen on the defendant's lands in *Paget's Bromley* decreed ;

THE COURT further ordered the deputy remembrancer to take an account of what was due from *Lord Bagot* for the tithes of the lands in his occupation in *Bromley Abbott's*; but as he had on the twenty-ninth day of *January 1781* offered to pay the plaintiff six pounds, in full satisfaction of such tithes, with costs to that time, the consideration of costs, respecting the said account, was reserved until the deputy should report whether the money so tendered was all that was then due for the said tithes.

and also of what had arisen on *Cromersley Meadow* ;

THE COURT further ordered the deputy to take an account of what was due from *Ann Ward*, as administratrix of her late husband *William Ward*, and on his own account, for tithes arising on *Cromersley Meadow*, with costs.

but the question as to the tithes of the *New Intakes*, reserved ;

THE COURT reserved the question as to the tithes from the lands late in the occupation of the said *W. Ward*, and since his death called the *New Intakes*, until after the trial of the following issues :

Issue directed to try, whether 4d. a-year were payable by resident, in lieu of tithe hay and agistments on *Broom Farm* ;

FIRST, " Whether, from time whereof the memory of man is not to the contrary, there hath been paid, and of right accustomed to be paid, by the tenant of the farm in the said parish, late in the occupation of the said defendant *William Blackwell*, such tenant being resident within the said parish, to the vicar thereof for the time being, in lieu of all tithes of hay or agistment, arising from or upon the lands composing the said farm, the yearly sum of fourpence at *Easter*."

and whether 1s. 1s. 10d. 2^d. and 3s. were payable in lieu of the tithe hay and agistment of *Allen's*, *Goodwin's*, *Walker's* and *Proctor's* farms.

SECONDLY, " Whether, from time whereof the memory of man is not to the contrary, the several yearly sums of one shilling, one shilling and tenpence, twopence, and one shilling, have been due and payable at *Easter* yearly, by the occupiers, being resident within the said parish of the four ancient farms in the said parish (parts whereof are in the occupation of the defendant *Ann Ward*, and late were in the occupation of her husband *William Ward*, deceased) called *Proctor's*, *Allen's*, *Goodwin's* and *Walker's*; that is to say one shilling for *Proctor's*, one shilling and tenpence for *Allen's*, twopence for *Goodwin's*, and one shilling for *Walker's*, to the vicar of the said parish for the time being, or persons entitled to the tithe hay and agistment of the lands composing the said farms respectively in lieu of such tithes."

The defendants in equity to be plaintiffs at law.

The said defendants *William Blackwell* and *Ann Ward* to be plaintiffs at law; the judge to be at liberty to indorse, &c. with usual directions, &c.

The vicar consents that verdicts shall be found in favour of the occupiers;

Two feigned actions were accordingly brought; and by an order of *nisi prius*, dated the second of *August 1787*, it was ordered, by consent of the parties, that verdicts should be found for

for the respective plaintiffs, with one shilling damage in each cause; that such verdicts should not carry any costs, but that each party should bear his own costs in equity; and that it should be referred to *Richard Hill*, to ascertain the annual value upon the tithes of such parts of *Heatley Field*, *Harley Field*, and *Lay Field*, as in the year 1724 were uninclosed; that the sum which the same should be set at, should be thenceforth paid annually by *Lord Bagot* and his successors to the vicar during his incumbency, he consenting to any application that *Lord Bagot*, or his successors might make to parliament to perpetuate the agreement, which was, by consent, ordered to be made a rule of the court.

that an annual sum shall be ascertained as the tithes of such parts of *Heatley Field*, *Harley Field*, and *Lay Field*, as were uninclosed in the year 1724, and that the said sum should be yearly paid as the tithes thereof.

The causes came on accordingly to be tried, and the jurors in the action brought by *William Blackwell* found, "that, from the time whereof the memory of man was not to the contrary, there had been paid, and of right had been accustomed to be paid by the occupier for the time being of the within mentioned farm, such occupier being resident within the said parish to the vicar thereof for the time being, in lieu of all tithes of hay and agistment arising on or upon the lands composing the said farm, the yearly sum of fourpence at *Easter*, as the said *William Blackwell* had in that behalf well alledged;" and the said jurors assessed the damages of the said *William Blackwell*, by reason of the premises, besides his costs and charges to one shilling, and for those costs and charges to forty shillings.

The jurors find that 4d. a-year are payable at *Easter*, in lieu of the tithe hay and agistment of *Broom Farm*;

And in the action brought by *Ann Ward*, they found,

As TO THE FIRST ISSUE, "That the sum of one shilling had, from time whereof the memory of man was not to the contrary, been due and payable at *Easter* yearly by the occupier for the time being of the farm called *Proctor's*, such occupier being resident within the said parish, to the vicar of the said parish for the time being, in lieu of the tithe of hay and agistment arising from or upon the lands composing the said farm, as the said *Ann* had in that behalf alledged."

that is. is payable yearly at *Easter* by the resident on *Proctor's Farm* in lieu of tithe hay and agistment;

As TO THE SECOND ISSUE, "That the sum of one shilling and tenpence had, from time whereof the memory of man was not to the contrary, been due and payable at *Easter* yearly, by the occupier for the time being of the farm called *Allen's*, such occupier being resident within the said parish, to the vicar of the said parish for the time being, in lieu of tithe hay and agistment arising from or upon the lands composing the said last-mentioned farm, as the said *Ann* had in that behalf also alledged."

that is. 10d. is so payable in lieu of tithe hay and agistment of *Allen's Farm*;

As

DELVER
against
LORD BAGOT.
that 2d. is so
payable in lieu
of tithe hay and
agistment of
Goodwin's Farm;

As to THE THIRD ISSUE, " That the sum of twopence had,
" from time whereof the memory of man is not to the con-
" trary, been due and payable at *Easter* yearly by the occu-
" pier for the time being of the farm called *Goodwin's*,
" being a resident within the said parish, to the vicar of the
" parish for the time being, in lieu of the tithe hay and agist-
" ment arising from or upon the lands composing the said
" last mentioned farm, as the said *Ann* had in that behalf also
" alledged."

that 1s. is so
payable in lieu
of the tithe hay
and agistment of
Walker's Farm.

As to THE LAST ISSUE, " That the sum of one shilling had,
" from time whereof the memory of man was not to the con-
" trary, been due and payable at *Easter* yearly, by the occu-
" pier for the time being of the said farm called *Walker's*,
" being resident within the said parish, to the vicar of the said
" parish for the time being, in lieu of the tithes of hay and
" agistment arising from or upon the lands composing the said
" last-mentioned farm, as the said *Ann* had in pleading also
" alledged."

The order of
nisi prius discharg-
ed, and the issues
directed to be
tried again.

The cause came on on the thirtieth of *April* 1787 to be
heard upon THE POSTEAS; and upon hearing counsel, &c. the
order of *nisi prius* was discharged; and the trials ordered to be
had upon the issues directed by the decree of the twenty-first
day of *November* 1785.

The jurors find
4d. at *Easter* is
payable by the
resident occupier
of *Broom Farm*,
in lieu of the
tithe of hay and
agistment.

Two actions were accordingly brought, one by *William Blackwell* and the other by *Ann Ward*; and on the second of *June* 1788, both the causes standing in the paper to be tried, an order of *nisi prius*, dated the eighth of *August* 1787, was made to the effect as stated in this decree, in pursuance of which the causes came on to be tried, and the jurors in the action brought by *William Blackwell* found, " That, from time whereof the me-
" mory of man is not to the contrary, there had been paid, and
" of right had been accustomed to be paid, by the occupier for
" the time being of the farm in the declaration mentioned, such
" occupier being resident within the above-mentioned parish, to
" the vicar thereof for the time being, in lieu of all tithes of
" hay and agistment arising on or upon the lands composing the
" said farm, the yearly sum of fourpence at *Easter*, as the said
" *William Blackwell* in that behalf alledged."

And in the action brought by *Ann Ward*,

that 1s. is paya-
ble by the resi-
dent occupier of
Proctor's Farm.

As to THE FIRST ISSUE, " That the sum of one shilling had,
" from time whereof the memory of man was not to the contrary,
" been due and payable at *Easter* yearly, by the occupiers for
" the time being of a farm called *Proctor's*, such occupier being
" resident within the said parish, to the vicar of the said parish
" for the time being, in lieu of the tithes of hay and agistment
" arising

“ arising from or upon the lands composing the said farm, as the
 “ said *Ann* had in that behalf alledged.”

DELVES
 against
 LORD BAGOT.
 that is. and 10d.
 are payable by
 the resident oc-
 cupier of *Allen's*
Farm ;

As to THE SECOND ISSUE, “ That the sum of one shilling
 “ and tenpence had, from time whereof the memory of man was
 “ not to the contrary, been due and payable at *Easter* yearly,
 “ by the occupier for the time being of the farm called *Allen's*,
 “ such occupier being resident within the said parish, to the
 “ vicar of the said parish for the time being, in lieu of the tithe
 “ of hay and agistment arising from or upon the lands compos-
 “ ing the said farm, as the said *Ann* in that behalf alledged.”

As to THE THIRD ISSUE, “ That the sum of twopence had,
 “ from time whereof the memory of man was not to the contrary,
 “ been due and payable at *Easter* yearly, by the occupier for the
 “ time being of the farm called *Goodwin's*, such occupier being
 “ resident within the said parish, to the vicar of the said parish
 “ for the time being, in lieu of the tithe of hay and agistment
 “ arising from or upon the lands composing the said farm, as
 “ the said *Ann* in that behalf alledged.”

that 2d. are pay-
 able by the resi-
 dent occupier of
Goodwin's Farm ;

And as to THE LAST ISSUE, “ That the sum of one shilling
 “ had, from time whereof the memory of man was not to the
 “ contrary, been due and payable at *Easter* yearly, by the oc-
 “ cupier for the time being, of the farm called *Walker's*, in the
 “ last count of the said declaration mentioned, being resident
 “ within the said parish, to the vicar of the said parish for the
 “ time being, in lieu of the tithe of hay and agistment, arising
 “ from or upon the lands composing the said farm, as the said
 “ *Ann* had in that behalf alledged.”

that is. had been
 payable by the
 resident occupier
 of *Walker's Farm*.

By an order, dated the twenty-fourth of *November* 1787, re-
 citing the said order of *nisi prius*, dated the eighth of *August* 1787,
 it was ordered by consent, that the said order of *nisi prius* should
 be made an order of this court.

The order of *nisi*
prius made an
 order of court.

Richard Hill and *Samuel Wyatt* in the order of *nisi prius* made
 their award, dated the twenty-seventh day of *November* 1787,
 as in this order is fully set forth ; and upon hearing counsel for
 all parties ; and reading the decrees, dated respectively the
 twenty-first of *November* 1785, and the thirtieth of *April* 1787 ;
 and the order of *nisi prius*, dated the eighth of *August* 1787 ; and
 the two *posseas* ; the order, dated the twenty-fourth of *Novem-*
ber 1787 ; and the award ; it was ordered by consent, that the
 award be confirmed ; that the agreement contained in the order
 of *nisi prius* be confirmed ; and that the several payments of one
 shilling, one shilling and tenpence, twopence, and one shilling
 and fourpence, mentioned in the several issues directed to be
 tried by the said decrees of the twenty-first of *November* 1785,
 and the thirtieth of *April* 1787, and the several payments and
 sums of money mentioned in the schedule to the said order of
nisi prius, be established and made payable at *Easter* yearly, by
 the

The arbitrators
 make the award.

DELVES
against
LORD BAGOT.
The *modus* in
lieu of *Proctor's*,
Allen's, *Good-*
win's, and *Wal-*
ker's, confirmed.

the occupiers, resident within the said parish, of the four several ancient farms called *Proctor's*, *Allen's*, *Goodwin's*, and *Walker's*, as in the said issues mentioned, and of the several ancient farms in the said schedule mentioned, and set against the several payments or sums of money therein mentioned respectively to the plaintiff *J. Delves* during his incumbency of the vicarage of *Abbot's Bromley* afore said.

4l. a year di-
rected to be paid
in lieu of the
tithe of *Heatley*
Field, *Harley*
Field, and *Ley*
Field;

THE COURT further ordered, that the sum of four pounds, being the sum mentioned in the said award as the annual value of the tithes of hay and agistment of such parts of *Heatley Field*, *Harley Field*, and *Ley Field*, in the said order of *nisi prius* and in the schedule to the said award mentioned, be, from the said eighth day of *August* 1787, annually paid by the defendant *Lord Bagot* and his heirs to the said plaintiff *J. Delves* during his incumbency of the vicarage of *Abbot's Bromley* afore said, and be accepted by the said plaintiff in lieu and satisfaction of the tithes of hay and agistment of all such lands; and that the sum of twenty-four pounds, being the amount of such annual value for six years previous to the said eighth day of *August* 1787, be paid to the plaintiff by the said defendant, in lieu and satisfaction of all such tithes prior to the said eighth day of *August* 1787.

and 24l. for six
years arrears.

The matters in
the agreement
and the award to
be hereafter ob-
served.

THE COURT further ordered, that all and singular other the matters and things contained in the said agreement and award should be observed and performed by all the parties thereto.

MICH. TERM,
26. GEO. 3.

TRENCHARD against HEYDON.

Dorsetshire, 17th December 1785.

The curate of
the perpetual
curacy of the
united parishes
of *Charminster*
and *Stratton*, in
Dorsetshire, is en-
titled to 20l. a-
year from the
impropriator;
to a *modus* of 4d.
a milch cow, in
lieu of the tithes
of milk and
calves; and to
all other small
tithes, except of
wool and lambs,
in kind.

THE plaintiff *Trenchard*, as impropriator of *Charminster*, in the county of *Dorset*, claimed all tithes, both great and small, except such as were due to the plaintiff *Templeman*, as curate of the parish.

The defendant said, that the parish of *Charminster*, and the adjoining parish of *Stratton*, were peculiars within the deanery of *Sarum*; that each of the said parishes had a parochial church; that duty was performed in each every *Sunday*; that the tithes of corn, grain, hay, wool, and lambs, arising in the said parishes were impropriated; that the churches were united, and in the gift or donation of the impropriator; that a spiritual incumbent or perpetual curate had immemorially been appointed by the impropriator; that the said curate was entitled to a pension of twenty pounds a-year from the impropriator over and beside the *modus* after-mentioned; the agistment tithe for feeding of unprofitable cattle not yielding tithe of wool or lamb; and to the tithes of clover, grass seeds, orchards, gardens, fows, geese, ducks, hens, bees,

and other small tithes arising in the said united parishes (except wool and lambs); and, admitting that he was indebted to the curate twelve shillings and sixpence for the tithes of garden stuff, he set up a *modus* of fourpence a milch cow in lieu of the tithes of milk and calves of every such cow in *Charminster* and *Stratton*.

TRENCHARD
against
HEYDON.

An issue was directed to try, "Whether, from time whereof the memory of man is not to the contrary, there hath been paid and payable to, and accepted and taken by, the curate or incumbent of the parish of *Charminster*, in the county of *Dorset*, for every milch cow kept and depastured in the said parish, the yearly sum of fourpence, in lieu of the tithes of milk and calves of every such cow."

The jury found a verdict in favour of the *modus*.

THE COURT, on the sixteenth of *November* 1786, ordered the defendant to pay the twelve shillings and sixpence admitted by him to be due for the tithes of garden stuff with costs; and the bill to be dismissed as to the tithes of milk and calves, with costs both at law and in equity.

WATKINS against BAXTER.

Hampshire, 19th December 1785.

MICH. TERM,
26. GEO. 3.

THE vicar of *Odibam*, in the county of *Hants*, claimed all the small tithes arising throughout the parish, particularly the tithes of turnip seeds, clover seeds, and grass seeds.

The defendant *Burges* and others said, that the tithes of turnip seed, clover seed, and grass seed, had constantly and invariably, until the present claim, been deemed and considered within the said parish as *great tithes*, or belonging to the rector or his lessee, and not as small or vicarial tithes; and that the same had been rendered to and received by such rector or his lessee as *great tithes*.

The vicar of *Odibam*, in *Hampshire*, is entitled to the tithes of turnip seed, clover seed, and grass seed, although the same had been immemorially paid, as *great tithes*, to the chancellor of *Sarum*, as impropriator of the said parish.

The defendant *William Talbot*, clerk, admitted, that the rectory of *Odibam* was an appropriation to the chancellor of *Sarum*; that the chancellor for the time being was, by virtue of some ancient appropriation, entitled to the *great tithes* yearly arising therein; that the defendant *Mary Baxter* was entitled to the said rectory or parsonage, and the *great tithes* arising therein, excepting in the chapelries of *Rotherwick*, *Weston*, *Patrick*, and *Liss*, under a lease from the chancellor of *Sarum* to *John Watts* for three lives; that he, the defendant, before 1782, was chancellor of the said cathedral; and that *M. Baxter's* husband had agreed for the renewal of the said lease, which was granted to him and his trustees in *May* 1782; that the vicar was entitled to small tithes within the said parish and township, but not to the tithes

WATKINS
against
BAXTER.

of turnip seeds, clover, or grass seeds, arising therein, for that the tithes of such seeds had invariably, until the present claim, been deemed and considered as great and rectorial tithes, or as belonging to the appropriate rectory, and the rector thereof or his lessees, and not as small and vicarial tithes, and had been constantly and invariably rendered to and received by the said rector, or his lessees, as great tithes : and he insisted, that by virtue of such usage and custom the same were due, and ought to be rendered and paid to the rector for the time being, or his lessee, or to the persons claiming under him.

The defendant *A. Bennett* said, that he claimed, with his wife, under the said lease, to be entitled to all the tithes yearly arising within the said parish, except as aforesaid ; and that the tithes of the said seeds had invariably been deemed, in the said parish, *great tithes*, and not *small tithes*, and had been constantly paid to the rector or his lessee ; and he insisted, that by virtue of such constant usage and custom the said tithes were due, and of right ought to be rendered and paid to the rector or his lessees.

The defendants *Rusb* and *Bird* put in the usual answer, as trustees and executors ; and the defendant *Bird* said, he had found among the papers of *John Rogers*, the former lessee, to whom he was an executor, a receipt in the following words, *viz.* “ *November* the fourth 1780, Received of *Mr. Rogers* the sum
“ of two hundred pounds for a year’s rent for the small tithes of
“ the parish of *Odiham*, due to me at *Michaelmas Day* last, *Geo.*
“ *WATKINS* ;” that in *June* 1782, the plaintiff delivered to him a notice in the following words, *viz.* “ I demand of you all such
“ sums of money as *Mr. John Rogers*, late of *Holt*, in the county
“ of *Southampton*, yeoman, deceased, received in his life-time,
“ for the tithes of all grass seeds within the parish of *Odiham*,
“ in the county of *Southampton*, since the thirtieth day of *May*
“ 1773 ; and I also demand of you all such sums of money as
“ you, or either of you, have received for the tithes of all grass
“ seeds within the said parish of *Odiham* since the decease of the
“ said *John Rogers*, as executors of the last will and testament of
“ *John Rogers* ; dated this tenth day of *June* 1782, *GEORGE*
“ *WATKINS*, of *Odiham*—To the Reverend *Mr. Monte Rusb* and
“ *Mr. John Bird* ;” that the said *Rogers*, as lessee of the plaintiff, was entitled to all small tithes arising in the said parish from the time the plaintiff became vicar until his death, but not to the tithes of the aforesaid seeds.

The plaintiff replied ; the defendants rejoined ; and witnesses were examined on both sides ; and upon hearing counsel for all parties ; and on reading the several receipts for the tithes in question, and the proofs in the cause ;

THE COURT ordered the plaintiff’s right to the tithes of turnip seeds, grass seeds, and clover seeds, in the said parish of *Odiham*,

to be established ; and the deputy remembrancer to take an account of what was due to him from the several defendants for such tithes for *six years* next before the filing of the bill, but without costs on either side.

WATKINS
against
BAKTER.

SKYNNER, *Chief Baron.*
EYRE, *Baron.*
HOTHAM, *Baron.*

THOMPSON *against* EMMOTT.

HILARY TERM
26. GEO. 3.

Yorkshire, 1st March 1786.

THE plaintiff, who had from the year 1775 to *June 1782* been lawful rector of *Addingham*, in the county of *York*, claimed the tithes of hay, corn, grain, potatoes, turnips, clover, agistment of barren and unprofitable cattle, and all other tithes, both great and small, arising therein, in kind ; and stated, that, by an instrument which the defendants had in their custody, made about the time of *James the First*, it appeared, that the pretended *modus*, on the ground of which they had refused to pay their tithe in kind, were not prescriptive *modus*, but of modern date, and payable under some modern agreement between them or their ancestors and some of the plaintiff's predecessors.

The rector of *Addingham*, in *Yorkshire*, is entitled to the tithes of *Gatecroft Farm*, of *Beachcroft Farm*, and of the *Reddings*, in kind.

The defendant *Emmott* admitted, that she occupied *Gate Croft Farm*, in that part of the parish called *Moor Side*, and certain other closes known by the name of *the Paddocks, the Leys, &c.* ; and said, that the same were formerly held as one farm, and that one shilling and fourpence had been, before and until the division of the said ancient farm, immemorially paid at *Michaelmas* by the owners or occupiers thereof, and since the division by the owners or occupiers of the several parts thereof, or some of them, to the rector of *Addingham*, in lieu of all tithes, both great and small, yearly arising thereon, except the tithes of calves, wool, and lambs, which she admitted had been usually taken by the rector in kind ; and she pleaded the same in bar to the account and discovery sought by the bill.

The defendant *Smith* said, that the advowson of the rectory belonged to the lord of the manor of *Addingham*, as appendant thereto ; that the manor of *Addingham* had, for some time past, belonged to persons who were *quakers* ; that it then belonged to him ; that he was of the same religion ; that an unfair advantage had been taken thereof ; and in consequence of such unfair advantage, the plaintiff officiated as rector there by usurpation, and not of right. He admitted, that he occupied, as owner, certain closes of land, called *Cattle Gangs*, otherwise *Capple Gangs, &c.* situated in *the Low Grounds* ; and insisted, that a *modus* of one shilling and fourpence, at *Michaelmas*, was payable

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against
EMMOTT.

in lieu of the tithe of the grass thereof, whether made into hay or eaten with the mouths of barren and unprofitable cattle.

The defendant *Cockbutt* said, that he occupied the lands in his answer mentioned ; and spoke as to a *modus* being payable for the ground called *Thackwood*.

The plaintiff replied ; the defendants rejoined ; and witnesses were examined on both sides ; and upon hearing counsel ; and reading the evidence ;

THE COURT ordered a trial at law upon the following issues, viz.

FIRST, " Whether a certain *modus* or yearly payment of one shilling and fourpence, from time whereof the memory of man is not to the contrary, before and until the said division of a certain estate called *Gate Croft Farm*, situate in the parish of *Addingham*, in the county of *York*, hath been paid or payable, at *Michaelmas* in each and every year, or so soon after as demanded, by the owners and occupiers of such ancient farm or estate, and ever since the said division thereof, hath been so paid by the owners or occupiers of the several parts thereof, or some of them, to the rectors of the rectory of the said parish of *Addingham* for the time being, or to their tithe gatherers, farmers, or agents, for and in lieu and full satisfaction of all tithes, both great and small, arising, coming, renewing, growing, and increasing, in and upon the said farm, lands, or grounds (except the tithes of calf, wool, and lamb.)"

SECONDLY, " Whether, from time whereof the memory of man is not to the contrary, a certain *modus* or yearly payment or one shilling and fourpence hath at *Michaelmas* in each year, or so soon after as demanded, been paid or payable by the owners or occupiers of an ancient farm or estate, comprehending, amongst other premises, certain closes called *Beechcroft* and *Riddings*, situate within the said parish of *Addingham*, to the rectors of the said rectory for the time being, their tithe-gatherer, farmer, or agent respectively for and in lieu and full satisfaction of the tithe of grass yearly arising, growing, or renewing, in, upon, or from the said ancient farm or estate, whether cut and made into hay, or eaten by the mouths of barren and unprofitable cattle."

The defendants *Emmott* and *Smith* to be plaintiffs at law ; the issues to be tried by a special jury ; and the judge to indorse on the *poslea* any special matter ;

THE

THE COURT further ordered the bill to be dismissed as to the tithe of corn against all the defendants with costs, *Smith* undertaking to pay the amount of his tithe corn in case anything shall appear due to the plaintiff for the same.

THOMPSON
against
EMMOTT.

THE COURT further ordered the deputy remembrancer to take an account of all other titheable matters demanded by the bill with costs.

The parties compromised the matter as to the *moduses*.

BLACKFORD *against* THE GUARDIANS OF THE POOR OF THE ISLE OF WIGHT. EASTER TERM
26. GEO. 3.

Hampshire, 4th May 1786.

THE bill stated, that the plaintiff was, by virtue of the last will and testament of *J. Blackford*, deceased, seized of and entitled to the tithes of corn, grain, wool, and lambs, yearly arising in the parish of *Carisbrooke*, in the *Isle of Wight*, except the tithes of corn, grain, wool, and lambs, arising in a place called *Saint Cross*, in *Carisbrooke*, and in a place called *Longbrooke Field*, containing eighteen acres; that there was within the said parish a large tract of waste land, called the *Forest of Parkhurst*, or *Carisbrooke*, the soil whereof formerly belonged to subjects, but then to the crown; but that divers freeholders and other owners of land in the island, and particularly in *Carisbrooke*, had rights of common thereon; and that the said tract of land never was really a forest; that by an act of parliament passed in the eleventh year of *George the Third*, intituled, "An Act for establishing a "House or Houses of Industry for the Poor," eighty acres of land, parcel of the said forest, were granted to the guardians thereof; that they inclosed and improved the same as pasture, meadow, or tillage land, &c.; that they had corn and grain growing thereon, particularly in the year 1782; that the plaintiff was entitled to the tithes thereof; but being unwilling to injure the institution, had forborne to claim the same during the first seven years after the first cultivation, although the same were not barren nor within the protection of the statute of *Edward the Sixth*; that he had offered to accept a small satisfaction for such tithes, meaning only to assert his right thereto; but that they had refused to pay any thing, on pretence that the said eighty acres were not within the parish.

The owner of the tithes of the parish of *Carisbrooke*, in the *Isle of Wight*, is entitled to the tithes of the eighty acres of land, part of *Parkhurst Forest*, which was granted by statute 11. Geo. 3. to the guardians of the poor of *Carisbrooke*.

The defendants admitted, that there was in the *Isle of Wight* the said tract of land called *Parkhurst Forest*; and insisted, that it was an ancient forest; and that the said eighty acres so granted to them were not in the said parish.

The attorney general said, that he was a stranger to the matters and things in the bill, &c.

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POOR OF THE
ISLE OF WIGHT.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and upon hearing counsel, and reading the proofs, an issue was directed to try, "Whether the eighty acres of land, in the pleadings of this cause mentioned, or any part thereof, were in the parish of *Carisbrooke*."

The issue was tried; and the jury found, that the eighty acres of land are in the parish of *Carisbrooke*.

THE COURT, on the twenty-third of *November* 1786, ordered the deputy to take an account of the tithes of corn and grain demanded by the bill.

EASTER TERM
26. GEO. 3.

HUTTON against HANSON.

Nottinghamshire, 5th May 1786.

The prebendary of *South Searle*, in *Nottinghamshire*, is entitled to the tithes of corn and hay arising on the lands called *the Moors* and *the Hills*, in the townships of *Besthorpe* and *South Searle*, in kind;—*sed qu.* If there are not certain *moduses* in lieu of small tithes.

THE bill stated, that by a certain indenture of four parts, dated the twenty-sixth of *April* 1777, made between the plaintiffs *G. Edmonds*, *Richard Easton*, clerk, *Richard Hutton*, and *Edward Ward*, the said *Richard Easton* demised, for himself and his successors, prebendaries of the prebend of *South Searle*, founded in the cathedral church of the *Blessed Virgin Mary of Lincoln*, to the said *Richard Hutton*, his heirs, &c. all the prebend of *South Searle*, with all the houses, tithes, oblations, and profits whatsoever to the said prebend belonging (the advowson and the gift of the vicarage of *South Searle* excepted), to hold to him, his heirs, &c. as therein mentioned; that *Richard Hutton* granted a moiety thereof to the plaintiff *G. Edmonds*, as fully set forth in the said bill; that by virtue thereof, the plaintiffs were entitled to the tithes of corn, hay, and other titheable matters, in the said prebend, except the tithes of wool, lambs, and pigs, and some other small tithes, and also one moiety of a moiety of the tithes of hay, or the fortieth cock, in the township of *Spaldforth*, in the said parish, due to the vicar by endowment, &c. the said plaintiffs being entitled to the other moiety of such moiety, or one other fortieth cock of such hay, as lessees, the other moiety belonging to the prebend of *South Clifton*; that the defendants *Hanson* and *Cbeckley* occupied farms in the said prebend, particularly within the townships of *Besthorpe* and *South Searle*; that they had, from time to time, paid certain sums of money by way of composition for the said tithes until the twenty-fifth of *March* 1782; that the plaintiffs had given them proper notice that they would take their tithes in kind from that time; and that they were therefore entitled to tithes in kind of corn, hay, and other tithes, as lessees aforesaid, for all lands occupied by the defendants in the said year, except of such lands as they held in *Besthorpe Meadow*. They then enumerated the several species of titheable matters, particularly wheat, rye, barley, oats, pease, beans, hay, clover,

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clover, and turnips, which the defendants had had in the year 1782; and charged, that the vicar of *South Searle* was endowed only with the tithes of lambs, wool, pigs, other petty tithes, and with the fortieth cock of hay in *Spaldforth*; that he had no right to any tithes within the parish; but that they, as lessees, were entitled to all tithes therein, except as aforesaid. The bill further charged, that the pretended payments of eightpence an acre and fourpence an acre to the vicar, and one shilling and sevenpence halfpenny, and one shilling and sixpence an acre to the lessees of the prebend, were not *modus*es, but *compositions* only.

The defendants *Hanson* and *Cheekley* admitted the conveyances as stated in the bill; and said, that in the parish there were the two townships of *Besthorpe* and *South Searle*; that there were certain lands called *the Moors*, lying partly in each township; that the lands called *the Hills* laid wholly in the township of *Besthorpe*; that part of *Besthorpe Meadows* laid within both of the said townships; and they stated and insisted on the several *modus*es mentioned in the bill, as payable to the vicar and prebend, for every acre of land held, in lieu of the tithes thereof, and particularly that a *modus* of five shillings and eightpence for the tithes of *Besthorpe Meadows* had been immemorially paid as stated in the answer. The defendants further insisted, that the greater part of *the Glebe Lands*, being one hundred and forty acres, belonging to the said prebendary or his lessee, had been allotted and given to the prebend, in consequence of some ancient agreement with the land owners of the parish, as a part compensation for his tithes; that such lands, together with the *modus*es, were a full equivalent for the prebendary tithes of the parish, if set out in kind.

The defendant *Orme* said, that he had, for twelve years past, been vicar of *South Searle*; that the plaintiffs were the lessees of the prebend; but he denied that they were entitled to the tithes of corn, hay, or any other titheable matters in the prebend, except the tithes of wool, lambs, pigs, other small tithes due to the vicar, and the moiety of the tithes of hay in the township of *Spaldforth*. He said, that there was in the registry of the customary court of *York* an ordination or endowment of the vicarage of *South Searle*, or a register thereof, as set forth in his answer, and dated at *Carwed*, the thirtieth of *April* 1318; and that, by the said endowment, he was well entitled to the small tithes therein described; and all other small tithes in any manner belonging to the prebendal church and chapels; to a moiety of the tithe of hay which belonged to the said prebend in *Spaldforth*; and to all tithes, both great and small, of all and every the curtilages in the parish of *Searle*, in such manner as in the said endowment was mentioned; and he set forth a terrier, intitled, "A Terrier of *Girton* and *Spaldforth*, belonging to

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The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and upon hearing counsel, and reading the proofs, an issue was directed to try, "Whether the eighty acres of land, in the pleadings of this cause mentioned, or any part thereof, were in the parish of *Carisbrooke*."

The issue was tried; and the jury found, that the eighty acres of land are in the parish of *Carisbrooke*.

THE COURT, on the twenty-third of *November* 1786, ordered the deputy to take an account of the tithes of corn and grain demanded by the bill.

EASTER TERM
26. GEO. 3.

HUTTON against HANSON.

Nottinghamshire, 5th May 1786.

The prebendary of *South Searle*, in *Nottinghamshire*, is entitled to the tithes of corn and hay arising on the lands called *the Moors* and *the Hills*, in the townships of *Besthorpe* and *South Searle*, in kind;—*sed qu.* If there are not certain *moduses* in lieu of small tithes.

THE bill stated, that by a certain indenture of four parts, dated the twenty-sixth of *April* 1777, made between the plaintiffs *G. Edmonds*, *Richard Easton*, clerk, *Richard Hutton*, and *Edward Ward*, the said *Richard Easton* demised, for himself and his successors, prebendaries of the prebend of *South Searle*, founded in the cathedral church of the *Blessed Virgin Mary of Lincoln*, to the said *Richard Hutton*, his heirs, &c. all the prebend of *South Searle*, with all the houses, tithes, oblations, and profits whatsoever to the said prebend belonging (the advowson and the gift of the vicarage of *South Searle* excepted), to hold to him, his heirs, &c. as therein mentioned; that *Richard Hutton* granted a moiety thereof to the plaintiff *G. Edmonds*, as fully set forth in the said bill; that by virtue thereof, the plaintiffs were entitled to the tithes of corn, hay, and other titheable matters, in the said prebend, except the tithes of wool, lambs, and pigs, and some other small tithes, and also one moiety of a moiety of the tithes of hay, or the fortieth cock, in the township of *Spaldforth*, in the said parish, due to the vicar by endowment, &c. the said plaintiffs being entitled to the other moiety of such moiety, or one other fortieth cock of such hay, as lessees, the other moiety belonging to the prebend of *South Clifton*; that the defendants *Hanson* and *Cbeekley* occupied farms in the said prebend, particularly within the townships of *Besthorpe* and *South Searle*; that they had, from time to time, paid certain sums of money by way of composition for the said tithes until the twenty-fifth of *March* 1782; that the plaintiffs had given them proper notice that they would take their tithes in kind from that time; and that they were therefore entitled to tithes in kind of corn, hay, and other tithes, as lessees aforesaid, for all lands occupied by the defendants in the said year, except of such lands as they held in *Besthorpe Meadow*. They then enumerated the several species of titheable matters, particularly wheat, rye, barley, oats, pease, beans, hay, clover,

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clover, and turnips, which the defendants had had in the year 1782 ; and charged, that the vicar of *South Searle* was endowed only with the tithes of lambs, wool, pigs, other petty tithes, and with the fortieth cock of hay in *Spaldforth* ; that he had no right to any tithes within the parish ; but that they, as lessees, were entitled to all tithes therein, except as aforesaid. The bill further charged, that the pretended payments of eightpence an acre and fourpence an acre to the vicar, and one shilling and sevenpence halfpenny, and one shilling and sixpence an acre to the lessees of the prebend, were not *modus*es, but *compositions* only.

The defendants *Hanson* and *Cheekley* admitted the conveyances as stated in the bill ; and said, that in the parish there were the two townships of *Besthorpe* and *South Searle* ; that there were certain lands called *the Moors*, lying partly in each township ; that the lands called *the Hills* laid wholly in the township of *Besthorpe* ; that part of *Besthorpe Meadows* laid within both of the said townships ; and they stated and insisted on the several *modus*es mentioned in the bill, as payable to the vicar and prebend, for every acre of land held, in lieu of the tithes thereof, and particularly that a *modus* of five shillings and eightpence for the tithes of *Besthorpe Meadows* had been immemorially paid as stated in the answer. The defendants further insisted, that the greater part of *the Glebe Lands*, being one hundred and forty acres, belonging to the said prebendary or his lessee, had been allotted and given to the prebend, in consequence of some ancient agreement with the land owners of the parish, as a part compensation for his tithes ; that such lands, together with the *modus*es, were a full equivalent for the prebendary tithes of the parish, if set out in kind.

The defendant *Orme* said, that he had, for twelve years past, been vicar of *South Searle* ; that the plaintiffs were the lessees of the prebend ; but he denied that they were entitled to the tithes of corn, hay, or any other titheable matters in the prebend, except the tithes of wool, lambs, pigs, other small tithes due to the vicar, and the moiety of the tithes of hay in the township of *Spaldforth*. He said, that there was in the registry of the customary court of *York* an ordination or endowment of the vicarage of *South Searle*, or a register thereof, as set forth in his answer, and dated at *Carved*, the thirtieth of *April* 1318 ; and that, by the said endowment, he was well entitled to the small tithes therein described ; and all other small tithes in any manner belonging to the prebendal church and chapels ; to a moiety of the tithe of hay which belonged to the said prebend in *Spaldforth* ; and to all tithes, both great and small, of all and every the curtilages in the parish of *Searle*, in such manner as in the said endowment was mentioned ; and he set forth a terrier, intitled, “ A Terrier of *Girton* and *Spaldforth*, belonging to

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“ the Vicar of *South Searle*,” made the tenth of *April* 1764, and signed by the then minister and churchwardens and several of the inhabitants there ; another terrier, dated the twenty-second of *June* 1770, intitled, “ A Terrier of *South Searle*,” and signed by the then vicar and churchwardens and several of the inhabitants there ; and insisted, that the compositions therein mentioned were not binding on him or the plaintiffs as lessees ; for that although he had, from time to time, received compositions in lieu of the tithes to which he was entitled, amounting yearly to forty-three pounds and three halfpence, which was made up and paid by the several townships of *South Searle*, *Besthorpe*, *Girton*, *Girton Gates*, *Girton Easter Book*, and *Spaldforth*, he was entitled to take the tithes in kind for the time to come, if he should be minded so to do. He admitted, from a terrier of the twenty-second of *June* 1770, that there were in the townships of *South Searle* and *Besthorpe*, lands called *the Moors* ; that in *Besthorpe* there were other lands called *the Hills* ; that the other defendants insisted, that the plaintiffs, as lessees, were not entitled to any tithes whatsoever for the said lands, but that all tithes, both great and small, for such lands, were due to the vicar ; and that they paid to him fourpence an acre for the said lands in the township of *Besthorpe*, as a composition in lieu of tithes thereof, and six shillings and eightpence an oxgang, or eightpence an acre, for the said lands in *South Searle* ; and that the *great tithes* were not meant to be included in the said composition, as by the said terrier more fully appeared. He further said, that he did not know that he was, as vicar, entitled to the tithes of corn, grain, or hay, which arose from the said lands, except as in the endowment set forth ; but that if he had such right, he hoped the Court would protect it ; and he said, that he was a stranger to the compositions in the bill mentioned ; that he had not subtracted the tithes belonging to the plaintiffs ; and that he was not accountable for the same.

The plaintiffs replied ; the defendants rejoined ; and witnesses were examined on both sides ; and upon hearing counsel on both sides ; and reading the following evidence for the plaintiffs, *viz.* a copy of an endowment, dated the thirtieth of *April* 1318 ; a lease, dated the twenty-sixth of *April* 1777, for three lives, from *Richard Easton*, clerk, to *Richard Hutton*, of the prebend of *South Searle* ; a lease of a moiety of the said prebend, dated the twenty-eighth of *June* 1777, for three lives, from the said *Richard Hutton* to *G. Edmonds* ; a copy of the parliamentary survey, from the library of the *Archbishop of Canterbury* at *Lambeth*, of the manor and prebend of *South Searle*, *Lincoln*, dated the twenty-sixth of *November* 1650 ; the return of the committee of obstructions, dated the second of *January* 1651 ; a lease dated the twenty-fifth of *May*, in the twenty-sixth year of

of *Charles the Second*, from *G. Caldwell* to *E. Ward* and *G. Carver*, for twenty-one years, determinable on three lives; articles of agreement by and between the inhabitants of *South Searle* and *Besthorpe*, dated the twenty-first of *September 1673* and the first of *November* following; and also the twenty-fifth of *May 1687*, between *G. Carver* and divers therein named, for and concerning the inclosure of *Besthorpe*; a copy of a terrier of the vicarage of *South Searle*, dated the sixteenth of *May 1748*, and signed *John Dalton*, vicar, and by the four churchwardens; another copy of a terrier, dated the twenty-second of *June 1770*, signed *John Ridgehill*, vicar, the churchwardens, and some of the parishioners of *South Searle*; several depositions taken in the cause; and upon reading evidence on behalf of the defendants the occupiers, viz. the several depositions taken on their behalf;

HUTTON
against
HANSON.

THE COURT ordered the deputy to take an account of what was due to the plaintiffs from the occupiers for the tithes of all corn and hay which they had growing on their farms in *South Searle* and *Besthorpe* during the year 1782, with costs; and the bill to be dismissed with costs as against the vicar.

HAWES against SWAINE.

EASTER TERM
26. GEO. 3.

Wiltshire, 9th May 1786.

THE rector of *Little Langford*, in the county of *Wilts*, claimed the great and small tithes yearly arising therein; and stated, that he had let the glebe lands and tithes to the plaintiff *Loader* from year to year from *Michaelmas 1778*; that he had ever since held the same; that the defendants occupied the lands called *the Lower Farm* and *the Upper Farm*, consisting of arable, meadow, pasture, coppice wood, and common of pasture for several hundred of sheep on *the Downs* belonging to the said parish; that they had made hay, kept sheep, bred lambs, and sheared wool thereon; but that, with a view to injure and defraud the plaintiffs, they had driven off great numbers of sheep from their farms into another parish, and shearing them thereon had, on the same day, or very soon after, put and depastured them again on the said farms; the tithes of all which they had refused to pay.

The rector of *Little Langford*, in *Wiltshire*, claims the great and small tithes of *the Upper Farm*, *the Lower Farm*, and *the Four Meads*, in kind; and charges, that the defendants had removed their sheep out of the parish, in order to defraud him of the tithe of wool and lambs.

The defendant *Davies* said, that he occupied *the Upper Farm*, a coppice wood and common of pasture on *the Downs*; but denied that he had, with a view or design to injure or defraud the plaintiffs, driven off the sheep as charged in the bill; for that there was an immemorial custom in the parish for the owners and occupiers of the farms in his occupation to send sheep from the said farm at and before *Michaelmas Day* into another parish *Day*, send their sheep into another parish, bring them back again on *Lady Day*, and pay only half tithes for the agisting of them therein;

The owner of *the Upper Farm* sets up two customs:

1st, that the occupiers of the said farms may, on *Michaelmas*

to

HAWES
against
SWAINE.
adly, that the
occupiers of the
said farm are on-
ly to pay the
tenth lamb, in
lieu of the tithes
both of lambs
and wool.

The owner of
the Lower Farm
answers in like
manner; and as
to the Four
Meads sets up a
composition real
for the rector
to take the first
tensure of two
acres in Broad
Mead, in lieu of
the tithes of the
Four Meads.

The cause
heard.

The tithes of
the Upper Farm
and the Lower
Farm decreed in
kind;

but the question
as to the Four
Meads reserved.

to winter, and not fetch them back again until after the *Lady Day* following, and to pay to the rector *half tithe*, and no more, in respect of such sheep; that there was also another custom for the owners and occupiers of the said farms, who had lambs yeaned by the sheep fed thereon, and who had paid the tithe of lambs, not to pay any tithe wool for such lambs, the tithe lambs, according to the said custom, being paid both for the said lambs and the wool thereof.

The defendant *Swaine* said, that he occupied the *Lower Farm*; and spoke to the same effect as the other defendant; but he added, that the meads he occupied, called the *Little Mead*, *Broad Mead*, *Lower Mead*, and *Duttenham Mead*, were wholly exempt from the payment of tithe hay; for that a *composition real* had been made before the reign of *Queen Elizabeth*, by virtue of which the rector was to take the first cut or shear of two acres of *Broad Mead*, the acres to be set out and allotted by the owners of the meads in the middle of *Broad Mead*, in lieu of all titheable matters whatsoever, or at least in lieu of the tithes of hay yearly arising in the said meads.

The plaintiffs replied; the defendants rejoined; and witnesses were examined on both sides; and upon hearing counsel on both sides; and reading the evidence taken in the cause; and on full debate of the matter;

THE COURT ordered the deputy to take an account of what was due from *Swaine* for the agistment tithe of sheep, lambs, and barren cattle, for the tithes of calves, lambs, wool, pigs, poultry, garden stuff, and all the other titheable matters demanded by the bill; a like account of what was due to the said plaintiffs from *Davies* for the same species of titheable matters, and also for the tithe of coppice wood; and the cause to be further heard on the report: the consideration as to the tithes of the water grounds called *Little Mead*, *Broad Mead*, the *Lower Mead*, and *Duttenham Mead*, for which a *composition real* is set up, and also costs to be reserved, &c.

MICH. TERM,
27. GEO. 3.

TOMLINSON against GELL.

Derbyshire, 16th November 1786.

The impropria-
tor of *Wirk-*
worth in *Derby-*
shire, is not en-
titled to any
tithes arising in
those parts of
the hamlet of

Hopton, or on *Hopton Moor*, as are within *Griffe Grange*; but he is entitled to the agistment tithes of barren cattle depastured on other lands in the parish, and also to the tithes of corn, grain, and hay.

THE bill stated, that the defendant *Errington* had been, since *March 1781*, impropriator of *Wirksworth*, in the county of *Derby*; that in the said parish there was the hamlet of *Hopton*; that *Errington* was entitled to the tithes of corn, grain, hay, and herbage, arising as well in the said hamlet as elsewhere in the parish, and the liberties, precincts, and territories thereof, except

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against
GELL.

in certain lands called *Griffe Grange* and *the Sheep Walk*, which lands were part of the convent of *Dale*, and granted to the defendant's ancestor, by letters patent dated the twenty-third of *September*, in the thirty-eighth year of *Henry the Eighth*; that by indenture of lease dated the eighteenth of *January* 1782, *Errington* demised to the plaintiff, together with the tithes of divers other places within the said rectory, the tithes of corn, grain, hay, and other tithes within the hamlet of *Hopton*; that the defendant *Gell* and others occupied several closes of arable, meadow, and pasture lands, being ancient inclosed lands, and also a large pasture called *Hopton Moor*, situate in the hamlet, and being no part of *the Griffe Grange*; that they had grown corn, grain, and hay, and had agisted barren cattle thereon, the tithes of which they had refused to pay; that they had set out some parts of the tithe hay in the grass cock, which the plaintiff had made into hay, and taken away; but that they had unlawfully set forth other parts of their tithe hay in the swath, which he had refused to take away; and that in several other parts of the said lands they had not set out any tithe of hay, but had wholly subtracted the same; that they had also set out their tithes of corn and grain in some parts of the said lands, in loose parcels unbound, and so scattered that the same could not be divided from the rest; and therefore he had refused to take the same away; that from other parts they had carried away all the tithes of corn and grain growing thereon, without setting out any tithe for the same, as they ought to have done. The bill then charged, that tithes in kind had been immemorially paid for the said ancient inclosed lands, and also for *Hopton Moor*; and that whilst it remained open and uninclosed, tithes of wool and lambs had been paid to the vicar of the sheep and lambs depastured thereon; and that all persons having any lead mines thereupon had constantly paid tithe for the ore got therein. The bill therefore prayed, that the defendant *Gell* and others might be decreed to account with the plaintiff for all the tithes of corn, grain, hay, herbage, and the agistment of dry and unprofitable cattle which had arisen from the lands in their respective occupations in 1782.

The defendant *Gell* and his tenants admitted, that *Errington* was impropriator of the rectory of *Wirksworth*, and as such entitled to the tithes of corn, grain, and hay; but they denied, that he was entitled to any agistment or other small tithes arising therein; and insisted, that the vicar of the parish was endowed with all the tithes thereof, except the tithes of corn, grain, and hay, he paying to the dean of *Lincoln* a yearly pension of thirteen pounds, six shillings, and eightpence. They set forth the several lands they held in the hamlet of *Hopton*, and the quantities and values of the titheable matters which they had respectively had thereon; and admitted, that they had not set out the tithes of corn,
grain,

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against
GELL.

grain, or hay, of such parts of the lands as were in *the Griffé Grange*; but averred, that they had truly set out the tithes thereof on all those lands in the vill that were no part of *the Griffé Grange*. They also denied, that the tithe they had set out was so scattered, that it could not be divided from the rest; and insisted, that it was fairly separated and set apart, though not bound in sheaves; and that it was matter properly triable at law, whether such tithes were duly set out or not. They admitted, that during the time *Hopton Moor* had remained open and uninclosed, a small yearly sum had been paid to the vicar of *Wirksworth*, by way of *composition* for the tithes of wool and lambs of those sheep which were depastured on such part of the said moor as was not within *the Griffé Grange*: they also admitted, that all persons having any lead mines within that part of *Hopton Moor* which did not lie within *the Griffé Grange* had paid tithe ore to the vicar; but they denied, that any tithe ore had ever been paid or demanded until six or seven years ago for such part of the said moor as laid within *the Griffé* and manor of *Griffé Grange*; and they averred, that they had paid the vicar a composition for the vicarial tithes for 1782 which had arisen on such parts of their respective lands as were not in *the Griffé* or manor of *Griffé Grange*. They further said, that the field of ancient inclosed land in the hamlet of *Hopton*, containing eight acres, occupied by the defendant *Gell* in 1782, was called *the Old Knowle Close*; that the two closes of ancient inclosed land, containing four acres, occupied by the defendant *Jackson* in 1782, were called *the Two Old Knowle Closes*; and that the said three closes were situated contiguous to a place anciently called *Fugles Leys*, but then known by the name of *Windmill Leys*, near *Carlington Hill*, which was part of a late common or open land called *Brassington Common*, and which had lately been inclosed.

The defendant *Gell* said, that it appeared from old deeds and writings, that previous to the reign of *Henry the Third*, one *William Ingram* made a donation of his lands in *the Brett Griffé*, with all that of right belonged to them in the territories of *Brassington*, *Hopton*, and *Carlington*, to the abbey of the park of *Stanley*, otherwise *the Convent of Dale*; that the said gift was afterwards confirmed by several successive deeds, in some of which were specified ten acres of land, measured by the perch of twenty feet, in the territory of *Hopton*, situate near *Brassington*, in *Ingles Leys*; that the said three closes, called *the Old Knowle Closes*, being so situate, and measuring ten acres by the perch of twenty feet, were part of the lands comprised in the said donation and in the subsequent confirmation; that the said lands were within *the Griffé* and manor of *Griffé Grange*, or part of the lands heretofore belonging to the abbey of the park of *Stanley*, otherwise *the Convent of Dale*, and heretofore granted to the defendant's ancestors; that the lands for which his tenants had not set

set out tithes were part of *the Griffe Grange*, and for the reasons above stated not liable to the payment of tithes. He further said, that *Hopton Moor*, before it was inclosed, contained eight hundred and thirty-seven sheep gates; that his tenants did not hold any of them; that as well the sheep and lambs depastured thereon, before the inclosure thereof, by persons who had sheep gates or a right of keeping sheep thereon, were kept indiscriminately on, and ranged at times over the whole of the said moor; but that the tithe of wool and lambs, or the composition in lieu thereof, which was paid to the vicar of the parish of *Wirksworth*, was paid only in respect of that part of *the Moor* which was not within *the Griffe* and manor of *Griffe Grange*.

TOMLINSON
against
GALL.

The defendant *Tillard*, the vicar of the parish (a), said, that *Errington* was the impropriator of *Wirksworth*, and entitled to the tithes of corn, grain, and hay, within such parts thereof as were titheable; that he had executed the lease to the plaintiff;

(a) On the twenty-fourth of February 1723, Hilary Term, in the tenth year of *George the First*, the case of *Inett v. Statbam* came before the Court. The plaintiff, as vicar of *Wirksworth*, claimed the tithes of grist mills, calves, milk, foals, sheep, wool, lambs, pigs, geese, honey, fruit, vegetables, poultry, eggs, and all other small tithes, arising in the vicarage, particularly the tithes of lambs, wool, and poultry in kind; one penny for every person above the age of sixteen: sixpence for a man servant, and fourpence for a maid servant, as *Easter* offerings; threepence a-year for a house; one penny a cow, at *Easter*, in lieu of tithe milk; three halfpence a calf; one penny a foal; and one penny a swarm of bees. The defendant denied, that the vicar was entitled to the tithes of grist mills in the *grange* of *Wigwall*, by reason that a *modus* was payable for the same to the impropriators the dean and chapter of *Lincoln*. He also denied that the vicar was entitled to the tithes of sheep, wool, lambs, and poultry in kind throughout the vicarage. He also denied the existence of the *moduses* in lieu of milk, calves, foals, bees, houses, and *Easter* offerings. He admitted, that he held houses and lands in *Wigwall Grange*, parcel of the possessions of the abbey of *Darley*. THE COURT ordered the defendant to account for the tithes, *moduses*, and *Easter* offerings, as demanded by the bill. But on the fifth of July 1729, *Statbam* filed his bill against the vicar, stating, that at *Lincoln*, in the year 1249, a *real composition* had taken place between the abbot and convent of *Darley* and the dean and chapter of *Lincoln*, respecting the tithes of certain lands in *Wigwall* belonging to the ab-

bey; that it was agreed that the abbot and his successors should pay every year, on the octave of the *Holy Trinity*, to the church of *Wicks*, for the wool of every one hundred sheep of all kinds, three shillings; for every one hundred lambs, three shillings; and proportionably for a less number of them; for every cow with calf, one penny; and for all other small tithes, tenpence; that in the year 1275, an endowment of a perpetual vicar was made by the dean and chapter, and the said tithes given to the vicarage; that in the same year, a second agreement, to the like effect, was made, and the said endowment confirmed by the dean and chapter and the *Bishop of Litchfield and Coventry*; that the said *composition real* had been observed from the year 1249 until the dissolution of the abbey; that in the year 1359, *R. Ireton*, the then vicar, acknowledged the said composition, and that it had relation to the lands of the abbey at *Wigwall's*; and then he deduced the said lands from the grant of *Henry the Eighth* to himself in fee; and stated, that he was advised to let the former decree go by default, for want of the ancient tithing-book in the vicar's possession. The bill then prayed, that the *real composition* respecting the lands called *Wigwall Grange* might be established. The vicar denied that there were any such compositions; and insisted, that he was entitled to tithes, in the manner stated in his former bill. THE COURT, on reading the said indenture dated at *Lincoln* in 1249, and the subsequent confirmation of it in the years 1175, 1285, 1359, and the grant of *Henry the Eighth*, ordered the *real composition* to be confirmed.

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GELL.

and that he was entitled to tithe for agistment of dry and unprofitable cattle in such parts of the parish as were titheable.

The plaintiff replied ; the defendants rejoined ; and witnesses were examined on both sides ; and upon hearing counsel for all parties ; and reading the several depositions in the cause ; and the following evidence for the defendants, viz. a grant, dated the twenty-third of *September*, in the thirtieth year of *Henry the Eighth*, from the said king to *Ralph Gell* ; a lease from the abbot and convent of *Dale*, in the county of *Derby*, to *Ralph Gell*, dated the sixth of *March*, in the twenty-third year of *Henry the Eighth* ; a lease from the said abbot and convent of *Dale* to *Ralph Gell*, son of *John Gell*, of *Hopton*, dated the twelfth of *January*, in the eighth year of *Henry the Eighth* ; a lease from the said abbot and convent of *Dale* to *Richard Blackwall*, dated the tenth of *November* 1489 ; and offering to read in evidence an ancient paper, coming out of the muniments of the *Gell* family, and the same being objected to, and the objection allowed by the Court ; and on reading an ancient grant, without date, from *Robertus Filius de Wynn* to *Robert Yngram* ; a confirmation thereof from *Cecelia de Ferrars* to *Deo Ecclesie et Parco de Stanley*, in the forty-fourth year of *Henry the Third* ; a grant from *Richard de Curzon* and *Willus de Skinnings* to the abbot and convent of *Dale*, without date ; a grant from *William de Ferrers*, *Comes de Derby*, to *Negell*, son of *Ralph Pristell*, without date ; a grant from *William*, the son of *William de Beiguinnion* to *Deo et Ecclesie et Parco de Stanley*, without date ; a grant from *William*, the son of *Robert Yngram de Nottingham*, to *Deo et Ecclesie Beate Marie et Parco de Stanley*, without date ; a grant from *Robert*, the son of *Adam le Wynn*, to *Robert Yngram* of *Nottingham*, without date ; a deed of quit claim from *Ralph de Prestwood* to *Deo et Ecclesie Beate Marie et Parco de Stanley*, without date ; and on full debate of the matter ;

THE COURT ordered the bill to be dismissed as against *Richard Tillard* with costs ; and also dismissed as to such part as prayed an account of the tithes of corn, grain, and hay, upon the lands in the respective occupations of the defendant *Gell* and his tenants, not comprized in the following issues, with costs to be taxed.

THE COURT further ordered the deputy remembrancer to take an account of the tithes of agistment of dry and unprofitable cattle depastured upon the lands in the respective occupations of the said defendants *Gell* and his tenants, not comprized in the said issues, the Court reserving the consideration of costs in respect thereof until the coming-in of the report.

THE COURT further ordered the following issues to try,

FIRST,

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FIRST, "Whether the several new-inclosed lands, late parcel
" of *Hopton Moor*, mentioned in the defendant's answers to have
" been in the occupations of the several defendants *Gell*, *Fox*,
" *Jackson*, *Gregory*; and *Higton*, in the year 1782, viz. one hun-
" dred and twenty acres of the new inclosed land in the
" occupation of the defendant *Gell*; twenty-two acres of the said
" new-inclosed land, in the occupation of the defendant *Fox*;
" seven acres of the new-inclosed land, in the occupation of the
" defendant *Jackson*; forty-eight acres of the new-inclosed
" land in the occupation of the defendant *Gregory*; and eleven
" acres of the new-inclosed land, in the occupation of the
" defendant *Higton*, or any of them, are part of the manor and
" lordship and grange of *Griffe*, otherwise called *Griffe Grange*,
" formerly belonging to the abbey of the park of *Stanley*,
" otherwise called the convent or monastery of *Dale*, and
" afterwards granted by letters patent of the year
" of the reign of *King Henry the Eighth* to *Ralph Gell*,
" *Esquire*."

SECONDLY, "Whether the lands in the pleadings mentioned
" to have been occupied by the defendants *Gell* and *Jackson*,
" in the year 1782, called *the Old Knowle Closes*, are part of the
" manor and lordship, and grange of *Griffe*, otherwise called
" *Griffe Grange*, or belonging thereunto, or part of the lands
" heretofore belonging to the abbey of the park of *Stanley*,
" otherwise called the convent or monastery of *Dale*, and granted
" by letters patent of the year of the reign of *King*
" *Henry the Eighth* to *Ralph Gell, Esquire*, and as such not liable
" to the payment of tithes to the plaintiff."

THIRDLY, "Whether the tithes of the lands mentioned in
" the first issue passed by letters patent mentioned in the first
" issue to the ancestors of the defendant *Gell*."

FOURTHLY, "Whether the tithes of the lands mentioned in
" the second issue passed by the letters patent mentioned in the
" second issue to the ancestors of the defendant *Gell*."

The defendants in equity to be the plaintiffs at law; to be
tried by a jury; the judge to be at liberty to indorse, &c.;
and a view to be had; with the usual directions.

The issues were accordingly tried; and a verdict was found
for the plaintiffs on all the issues.

Gell and others prayed a rehearing as to that part of the decree
which directed an account to be taken of the tithes of agistment
of dry and unprofitable cattle depastured upon the lands in the
occupation of the defendants not comprised in the said issues, and
that reserved costs in respect thereto; and a rehearing was
granted accordingly upon the usual deposit.

The

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GELL.

The cause came on to be reheard, and for further directions upon the *postea*, on the twenty-fourth of *January* 1788 : when upon opening the decree, petition, and *postea*, and reading the same ; and an indenture of lease from the dean of *Lincoln* to the defendant *G. Errington* of the impropriate rectory or parsonage of *Wirksworth*, dated the sixteenth of *May* 1788 ; an indenture of lease from the said *G. Errington* to the plaintiff of the said impropriate rectory or parsonage, dated the eighteenth of *January* 1782 ; and the deposition of the defendant *Richard Tillard*, examined as a witness on the part of the defendants, being offered to be read on their behalf, and objected to by the counsel on behalf of the plaintiff, and the objection allowed by the court ; and reading several depositions on behalf of the defendants ; also the deposition of the said defendant *R. Tillard* on the part of the plaintiff ; his cross examination on the part of the defendants ; a decree of this court, dated the twenty-sixth of *February* 1756, made in a cause wherein *George Errington* and another were plaintiffs, and *Sir John Statham, Knight*, and others were defendants ; a subsequent decree made in the said cause, dated the tenth of *May* 1756, making the above decree absolute ; another decree, dated the first of *February* 1759, for confirming the report ; a copy taken from the parliamentary survey in the library belonging to the *Archbishop of Canterbury* at *Lambeth*, intituled, " A Survey of the Rectories of *Asbburne* and *Wirksworth*, with their Rights and Members, in the County of *Derby*, late belonging to the Dean of the cathedral church of *Saint Mary, Lincoln* ;" the answer of the defendant *Tillard* ; and on debate of the matter ;

THE COURT ordered the said decree, made the sixteenth day of *November* 1786, in respect to such part thereof as directed an account of the tithes of agistment of dry and unprofitable cattle depastured upon the lands in the occupation of the defendants not comprised in the issues, &c. to be affirmed ; and the deputy to pay to the plaintiff the ten pounds deposit paid into court by the defendants.

THE COURT further ordered the bill, in respect to the demand of tithes on the lands comprised in the said issues to be dismissed as against the defendants *Gell* and others, with costs both at law and in equity.

EYRE, Chief Baron.
HOTHAM, Baron.
PERRYN, Baron.
THOMSON, Baron.

MARTIN

MARTIN *against* NEWDIGATE.MICH. TERM;
27. Geo. 3.*Derbyshire, 20th November 1786.*

THE bill stated, that the plaintiff *Allen* was vicar of *Kirkballam*, in the county of *Derby*; that in the parish of *Kirkballam* there was a hamlet called *Mapperley*, formerly part of the abbey of *Dale*; that the plaintiffs *Martin* and *Walker* were occupiers, and the plaintiffs *Lowe* and others owners of lands in the said hamlet; that the defendant *Newdigate* was *impropriator* of the rectory of *Kirkballam*; that all the lands in the hamlet of *Mapperley* had been immemorially exempted from the payment of tithes of the corn and grain; that there had been immemorially paid to the vicar seventeen shillings and sixpence yearly, as a *modus* in lieu of tithe hay in the said hamlet; that although no tithes of corn, grain, or hay arising in the said hamlet had ever been paid to any impropriator, the defendant in 1779, as impropriator of such rectory, claimed tithes in kind of all corn, grain, and hay produced in the said hamlet, and also all the small tithes in the parish of *Kirkballam*; that in *Michaelmas Term* 1779, he exhibited his bill in this court against the plaintiffs *Martin* and *Walker*, as occupiers of lands in the said hamlet, and against the plaintiff *Allen*, as vicar, thereby alledging, that he, as impropriator, was entitled to the said tithes; but that the matter was referred to arbitrators, who awarded, that all predial tithes in the hamlet of *Mapperley*, excepting tithe hay, belonged to the impropriator; and that the tithe hay, or a *modus* of seventeen shillings and sixpence in lieu thereof, belonged to the vicar; that the owners and occupiers of lands in the said hamlet, thinking they could maintain their claim of exemption of tithes against the defendant, were dissatisfied with the said award. The bill therefore prayed, that the lands of *Martin* and *Walker*, in the said hamlet, might be declared free from tithe corn, or that *Newdigate's* agreement with them might be performed, and an issue directed to try his right to the said tithes of corn and grain arising in the said hamlet; and that the defendant might be restrained from proceeding at law, on the bond mentioned in the agreement.

The rector of *Kirkballam*, in *Derbyshire*, is entitled to all rectorial tithe, except tithe hay, as well in the hamlet of *Mapperley* as in the rest of the parish:

there is a *modus* of 17s 6d. a-year, payable to the vicar in lieu of the tithe hay of the hamlet.

The defendant admitted, that *Allen* was vicar and entitled to all small tithes; that there was in the said parish the hamlet of *Mapperley*, formerly part of the possessions of the abbey of *Dale*; and that *Martin* and *Walker* were occupiers of lands therein; but he denied, that any of the lands therein were exempt from the payment of the tithes of corn and grain; and insisted, that he, as impropriator, was entitled to all rectorial tithes, except of hay, produced in the said hamlet, and in every part of the parish;

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against
NEWDIGATE.

and he admitted, that he had filed his bill for the same; and he spoke to the same effect, as to the bond and award, as was mentioned in the bill.

The plaintiffs replied; the defendant rejoined; and witnesses were examined on both sides; and upon hearing of counsel for both parties; and on reading the arbitration bond, dated the first of *November* 1780, signed by *J. Martin* and others; and the award, dated the twenty-eighth of *May* 1781, signed *John Balguy* and *William Fitzherbert*; and the answer and the depositions of *John Harrison*, and also his cross examination; and on debate of the matter;

THE COURT ordered the bill to be dismissed with costs.

MICH. TERM,
27. GEO. 3.

TAYLOR against FOX.

Leicestershire, 21st *November* 1786.

The rector of *Market Bosworth*, in *Leicestershire*, is entitled to the great and small tithes in kind arising in the hamlet of *Sbenton*.

THE rector of *Market Bosworth*, in the county of *Leicester*, claimed all the great and small tithes arising therein, particularly in the liberty or chapelry of *Sbenton*, a hamlet within the parish, in which there was A CHAPEL OF EASE belonging thereto, the duty of which was performed by a curate found and provided at the plaintiff's expence.

The defendant *Fox* and others said, that from time of great antiquity, and down to the year 1769, the rectors of *Bosworth*, as well as the plaintiff himself, had constantly accepted from *William Woolaston* and his ancestors, lords of the manor of *Sbenton*, and owners and proprietors of the several farms within the said manor, and particularly of the farms then occupied by the defendants, the yearly sum of twenty-five pounds in full satisfaction of all the tithes of all titheable matters arising in the hamlet of *Sbenton*; that *Woolaston* was abroad; that the said twenty-five pounds had been paid to the use of the rector in satisfaction of the tithes in the said hamlet, as a *modus* or immemorial payment, but that they believed that the same was liable to be refused by any rector of the parish; that sometime before *Lady Day* 1779, they received notice that the plaintiff would from and after *Lady Day* 1779, take his tithes in kind; that before *Midsummer* in the said year the plaintiff applied to them for payment of some of the tithes in kind, which they refused to comply with; that the said *William Woolaston* was owner and proprietor of the grounds within the said parish in their occupation; and that he had indemnified them in not paying their tithes in kind.

The defendants *Seager*, *Dudley*, *Baxter*, and *J. Richards* said, that, from time whereof the memory of man was not to the contrary, a certain yearly sum of seven pounds *per annum*, called a *rate* or *composition tithe*, had been payable to the rector of the parish

parish of *Sibson*, for and in lieu of tithes arising upon certain lands situate within the said hamlet of *Shenton*, which were then in the occupation of the defendant *John Beeby*, as tenant to the defendant *W. Woolaston*, and which payment was mentioned in the terriers of the glebe land and profits of the said rectory of *Sibson*.

TAYLOR
against
FOX.

The defendant *J. Evans* said, that he was rector of *Sibson*; that he had never pretended, that any part of the lands in the hamlet of *Shenton*, and particularly the lands in the bill mentioned to be in the occupation of the other defendants, were situate in the parish of *Sibson*; that he had never received or pretended to have any title to any tithes or any *modus* or payment on account of tithes of any land in the said hamlet; that the parishes of *Sibson* and *Market Bosworth* were adjoining to each other, but that he could not set forth the boundaries of the said parishes.

The plaintiff replied; the defendant rejoined; and witnesses were examined; and upon hearing counsel for all parties; and on reading the proofs taken in the cause; and on full debate;

THE COURT ordered *Fox* and others, the occupiers, to account for the tithes demanded by the bill, with costs; and the bill, as against *Baxter* and others, to be dismissed with costs.

THE COURT further ordered, that this decree be *without prejudice* to any right the rector of *Sibson* may hereafter set up to the tithes in question in this cause, or any part thereof.

The deputy made his report, dated the twenty-seventh of *November* 1786; the defendants filed exceptions thereto; and upon hearing counsel on both sides, the Court ordered the exceptions to be over-ruled, and the report to be confirmed.

THE COURT further ordered the defendants to pay to the plaintiff the several sums of money reported due from them respectively, subject to a deduction of such sum or sums of money, as should appear to have been paid by the defendants respectively to the rector of *Sibson*, on account of the sum of seven pounds *per annum* for tithes; such deduction to be made by such of the defendants who should produce a receipt or receipts for the same; and that they do pay the said plaintiff his subsequent costs, to be taxed.

EYRE, *Chief Baron*.
HOTHAM, *Baron*.
THOMSON, *Baron*.

MICH. TERM,
27. GEO. 3.

WEST against HOOPER.

Wiltshire, 15th December 1786.

The rector of *Dauntsey*, in *Wiltshire*, is entitled to the great and small tithes of *Shepherd's Farm*, *Bartlett's Farm*, *the Union Lands*, *the Ever Green Lands*, part of *Burnt Bargain Farm*, the land called *Good Monday*, part of *Trotman's Cripps* and *the Stumps*, and *Dauntsey Park Farm*, formerly the demesne lands of the abbey of *Bradenstoke*, in kind.

THE rector of *Dauntsey*, in the county of *Wilts*, claimed the great and small tithes of the parish in kind, particularly the tithes of corn, grain, clover, hay, grass, agistment of barren cattle, and other small tithes, since *Lady Day* 1784.

The defendant *J. Tanner* said, that there was in the parish an ancient farm called *Shepherd's and Bartlett's*, which consisted of two hundred and forty acres of land; that certain pieces of land called by the name of *the Union*, parcel of the said farm, were in the occupation of *M. Running* and others; and that there then was and had been immemorially within the said parish, a custom that the owner or occupier of the said ancient farm, called *Shepherd's and Bartlett's*, should pay to the rector, by half yearly payments at *Lady Day* and *Michaelmas*, the yearly sum of six pounds, eighteen shillings, and tenpence, as a *modus* in lieu of all tithes whatsoever, arising from the said ancient farm and lands called *Shepherd's and Bartlett's*; that the said *modus* had been immemorially received and accepted by the rector for the time being, in lieu of such tithes; that the same ought to be received accordingly; and that he was ready and willing to pay the same if the plaintiff would accept thereof.

The defendant *J. Horton* said, that there was in the parish an ancient farm called *Burnt Bargain*, containing one hundred and sixty-six acres; that certain pieces of land called *the Ever Greens*, part of the said farm, were in his occupation, as also the remainder of the said farm; that there then was, and had been immemorially within the said parish of *Dauntsey*, a custom that the owner or occupier of the said ancient farm and lands called *Burnt Bargain* should pay to the rector at *Lady Day* and *Michaelmas* four pounds, nineteen shillings, and fourpence, as a *modus* in lieu of all tithes whatsoever arising from the said ancient farm and lands called *Burnt Bargain*.

The defendant *William Spencer* said, that there was in the parish an ancient farm called *Trotman's Cripps and Stumps*, which consisted of one hundred and seventy-five acres of land; that certain pieces or parcels of land called *Good Monday*, part of the said ancient farm were then in his occupation, and the remainder in the occupation of *J. Tanner* and *J. Mulcock*; that there then was, and had been immemorially within the parish, a custom that the owner or occupier of the said ancient farm and lands called *Trotman's Cripps and Stumps* should pay at *Lady Day* and *Michaelmas* five pounds, eleven shillings, and sevenpence halfpenny, as a *modus* in lieu of all tithes whatsoever arising

arising from the said ancient farm called *Trotman's Cripps and Stumps*.

WEST
against
HOOPER.

The defendant *R. Hooper* said, that he had for twenty years past rented in the parish *Dauntsey Park Farm* consisting of three hundred and twenty-five acres; that he had never paid any tithes in kind whatsoever for the said farms, for that the same then was, and from time immemorial had been held discharged of and from the payment of all manner of tithes; that the said farm and lands were parcel of *the demesne lands* belonging to the abbey of *Bradenstoke* in the said county at and long before the time of the dissolution thereof; that the same were held by the abbot, at and before such dissolution, freed and discharged from the payment of any tithes whatsoever; that by virtue of the statute of 31. *Hen. 8.* the said abbey, one of the greater abbies, was dissolved; that the said farm and lands called *Park Farm*, together with other possessions of the abbot and convent thereupon became vested in *Henry the Eighth*; that they were granted by him to some person or persons; that neither the said king nor any of his grantees thereof, nor any of the owners or occupiers thereof had, since the dissolution of the said abbey, paid any tithe whatsoever arising from the said farm and lands, nor any satisfaction in lieu of the same, but had constantly held and enjoyed the same exempt and discharged therefrom; that the same therefore ought to be so exempted, and the plaintiff decreed not entitled to any tithes coming therefrom, or to any satisfaction in lieu thereof.

The defendants *Tanner, Horton, and Spencer* denied, that the plaintiff had ever applied to them, save by the bill; but they admitted, that they had received the notice therein mentioned for the payment of their tithes in kind.

The plaintiffs replied; the defendants rejoined; and witnesses were examined on both sides; and upon hearing counsel on both sides;

THE COURT ordered the deputy to take an account of what was due from the several defendants respectively, for all and singular the titheable matters and things demanded by the bill; the defendants *Tanner, Horton, and Spencer* to pay the plaintiff his costs; and the account, as to the defendant *Hooper*, to be taken without costs.

The deputy remembrancer made his report, dated the twenty-eighth of *February* last, to which the defendants took exceptions; and upon opening the decree, report, and exceptions on the twenty-first of *April* 1788; and hearing counsel;

THE COURT ordered the exceptions to be over-ruled; the report to be confirmed with subsequent costs; and the defend-

WEST
against
HOOPER.

ants to pay to the plaintiff the several sums reported due for the titheable matters demanded by the bill.

EYRE, *Chief Baron.*
HOTHAM, *Baron.*
PERRY, *Baron.*
THOMSON, *Baron.*

HILARY TERM
27. GEO. 3.

BLASHFIELD *against* MORRIS.

Herefordshire, 27th February 1787.

The farm called
the Priory, in the
parish of *Clifford*,
in *Herefordshire*,
is *tithe free*.

THE bill stated, that by indentures of lease and release, dated the third and fourth of *February 1782*, *John Whitmore* conveyed to *J. Powell*, by the directions of the plaintiff, the fee simple of the tithes of corn, grain, grass, and hay, and the emoluments and appurtenances thereto belonging, yearly arising within the fields, hamlets, precincts, and townships of *Hardwicke*, in the parish of *Clifford*, in the county of *Hereford*; that the defendant had been entitled to the said tithes; that he occupied a farm called *the Priory Farm*, in the said township; that he had had thereon wheat, muncorn, rye, barley, oats, pease, pulse, vetches, grass, and hay, the tithes of which he had refused to pay. The bill therefore prayed an account of all the tithes of corn, grain, grass and hay which he had collected or received, and payment of what should appear to be due thereon.

The defendant insisted, that the plaintiff had no legal right to the tithes, and claimed the same benefit from his, the plaintiff's, defect of title as if he had demurred to his bill on account thereof. He said, that he occupied *Priory Farm*; that the same was not in the township of *Hardwicke*; that it had never paid any tithes to the owner or proprietor of tithes thereof; that the said farm consisted of the site, circuit, and precincts of the late priory of *Clifford*, and of certain lands thereto belonging, usually held as part thereof, and of the tithes of the said site, circuit, precincts, and lands; that the same were among the several manors, lands, and hereditaments granted by *Edward the Sixth* to *William, Earl of Pembroke*, to hold by knight's service, distinct from any other the estates or possessions of the late priory of *Clifford*; that from the dissolution of the priory, and long before and until the present time no tithes had ever been paid or payable to any of the priors, or other occupiers of the said lands and premises, to the plaintiff, or to any other person or persons under whom he claimed; that the prior and convent were, on the day of the dissolution thereof, and had been long before seised in their *demesne as of fee* of and in all and singular the tithes yearly arising upon all and every part of the said farm and lands; that the said tithes did, on the dissolution of the priory, become vested in *Henry the Eighth*;

Eighth; that they continued in the crown until the same were granted by *Edward the Sixth*, or some other kings or queens of these realms to the said *Earl of Pembroke*, or some other person or persons under whom *Richard Woodhouse*, as owner of the lay fee and inheritance thereof claimed; and that the defendant was his lessee; that the manor or township of *Hardwicke* was only a part of the possessions belonging to the priory of *Clifford*; that it was held by socage distinct from the scite, circuit, and precincts of the priory, as well as from the manor of *Clifford*, under the respective grants thereof after the same became vested in the crown; that from the time of the dissolution of the priory, none of the proprietors of the manor or township, or of the tithes thereof had ever received any tithes from the lands belonging to or part of the precincts of the scite of the priory; but that in the title deeds of *the Priory Estate*, the same, together with other lands then held therewith, were described to be situate in the vills of *Clifford*, *Bach*, and *Dorston*, and no part thereof in the manor, vill, or township of *Hardwicke*; that the tithes of *the Priory Estate* had been from time to time conveyed as a lay fee, together with the said scite of the priory of *Clifford*; and that neither the said *J. Whitmore*, nor any of his ancestors, or the persons under whom he claimed, was or were seised of the tithes of *the Priory Estate*, or had ever received or enjoyed the same. The defendant admitted, that he had corn, grain, grafs, and hay growing on *the Priory Lands*, but insisted, that the plaintiff had not set forth such a case as entitled him to a discovery.

BLASHFIELD
against
MORRIS.

The plaintiff replied; the defendant rejoined; and witnesses were examined on the part of the plaintiff; and upon hearing counsel for all parties;

THE COURT ordered the bill to be dismissed with costs.

EYRE, *Chief Baron*.
HOTHAM, *Baron*.
PERRY, *Baron*.

COWLEY against KEYS.

HILARY TERM
27. Geo. 3.

Essex, 28th February 1787.

THE rector of *Goldhanger*, with the chapel of *Little Toltham*, in the county of *Essex* annexed, claimed the great and small tithes of the parish, particularly the tithes of *Longwick Farm*, of a decoy pond for taking wild ducks, widgeons, teals, and other wild fowl, of wheat, barley, rye, oats, pease, beans, coppice wood, underwood, sheep, milch cows, lambs, milk, calves, and various other titheable matters and things; and stated, that the defendant had yearly sold wild ducks, widgeons, owner, as having been formerly parcel of the possessions of the monastery of *St. Mary*, in the said county.

The estate called *Longwick Farm*, including the decoy for wild ducks, in the parish of *Goldhanger*, in *Essex*, is tithefree while it is in the occupation of the in *Coggeshall*, in

COWLEY
against
KEYS.

teal, and other wild fowl taken on and from *the decoy pond*; that he had made a great profit thereof; that there was within the said parish an immemorial custom that tithes in kind, or a full recompence for the value thereof, should be paid for all wild ducks, widgeon, teal, or other wild fowl taken on or from any decoy pond in the parish, and sold for money by the occupiers of such decoy pond; that by common right or ancient custom within the parishes near to and adjoining the parish of *Goldbanger*, tithes were due and regularly paid to the respective rectors and vicars thereof for all wild ducks and other wild fowl taken within such parishes, and sold in like manner; that no *modus* had ever existed in the said parish; that the tithes in kind of all the titheable matters were due to the plaintiff as rector, from the defendant as occupier of the said farm; that in case any composition had ever subsisted it was only a temporary agreement; that he had given the defendant a notice in writing, dated the twenty-ninth day of *September 1783*, to set out his tithes in kind; and that the great tithes of the said farm were worth eight shillings an acre. The bill therefore prayed an account from *Michaelmas 1783*, and payment of what should appear to be due thereon.

The defendant insisted, that *Longwick* otherwise *Longwyke Farm* had been formerly parcel of the possessions of the monastery of *Saint Mary in Coggeshall*, in the county of *Essex*; that the said abbey was of the *Cistercian order*; that it had been founded by *King Stephen* and his consort *Queen Matilda* in 1142; that it was afterwards surrendered or dissolved in the twenty-ninth of *Henry the Eighth*; that the said monastery, and the lands thereunto belonging, previously to and at the time of the surrender were in the manurance of the abbot and convent discharged from the payment of tithes; that in the twenty-ninth year of *Henry the Eighth*, the abbot and convent surrendered all the estates, including the said farm and lands, belonging to the abbey to THE CROWN; that the surrender was confirmed by 31. *Hen. 8.*; that the said lands so occupied and manured by him had continued tithe free ever since; that by letters patent, dated the seventeenth of *July*, in the thirty-fifth year of *Henry the Eighth*, the said king had granted, amongst other things, all that his manor or grange of *Tollebunt*, otherwise called *Tollebunt Grange* and *Longwyke*, in the said county, with the rights, members, and appurtenances, lately to the monastery of *Coggeshall* belonging, with its rights, members, and appurtenances, to *S. Beckingham* and *Ann* his wife, to hold to them, their heirs, and assigns for ever; that by virtue of several mesne conveyances he derived a title to the aforesaid lands; that they were then in his own occupation and manurance; that he had purchased the same about *April 1783*; that he still continued seised thereof in fee; and that so long as he should continue

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against
KAYE.

continue to occupy the same, he was not liable to pay any tithes for the produce thereof: and he set forth the number of acres the said farm contained, and the decoy pond, and how situated within the said parish of *Goldhanger* and of *Tolleshunt Beckingham*, and the quantities of the titheable matters he had fed, &c. thereon; and further insisted, that the tithe of wild fowl was not payable, as the same was not either due by custom or common right.

The plaintiffs replied; the defendant rejoined; and witnesses were examined on the part of the plaintiff before a BARON; when upon hearing counsel on both sides; and reading the following evidence for the defendant, viz. *Liber Regis* from THE FIRST FRUITS OFFICE, title "*Lexden Decanat*;" a surrender from THE AUGMENTATION OFFICE of the prior and fellows of the abbey of *Coggeshall*, dated the twenty-fifth of *February*, in the twenty-ninth year of the reign of *Henry the Eighth*; a grant from THE ROLLS, dated the seventeenth of *July*, in the thirty-fifth of *Henry the Eighth*; an *inquisitio post mortem* of *Stephen Beckyngham*, dated the fourteenth of *April* in the first year of *Queen Elizabeth*; a lease and release, dated the thirteenth and fourteenth of *May* 1724, from *Thomas Blandford* and others to *W. Leaper*, his heirs, and assigns; indentures of fine of *Trinity Term*, in the tenth year of *George the First*, *William Leaper*, plaintiff, and *Thomas Blandford*, deforçant; an indenture, dated the fifteenth of *July* 1737, between *William Leaper* of the one part, and *Thomas Hill* of the other part; a settlement, dated the twenty-seventh day of *February* 1738, between *William Leaper* and others; an assignment of a mortgage, dated the twenty-first of *December* 1741, from *Thomas Hill* to *C. Reynolds*; several other assignments and deeds of lease and releases in the fifteenth and sixteenth of *May* 1783, from *J. R. Kirby* to the defendant; a record of a bill and answer in this court, filed *Trinity Term*, in the fifth year of *George the Third*, *Keen v. Kirby*; the minister's books of the parishes of *Tolleshunt Major*, otherwise *Beckyngham*, and *Goldhanger*; and an extract therefrom, dated the fourth of *November* 1647; and reading the following evidence for the plaintiff, viz. an office copy of a fine of *Hilary Term*, in the twenty-ninth year of *Henry the Eighth*, between the said king demandant, and the abbot of *Coggeshall*, defendant; an office copy of a grant from THE ROLLS, dated the twenty-third of *March*, in the twenty-ninth year of *Henry the Eighth*, to *Sir Thomas Seymour*; a deed from the augmentation office, dated the twelfth of *May*, in the thirty-third year of *Henry the Eighth*, between the said king and the said *Sir Thomas Seymour*; a particular for a grant of lands to *Stephen Beckyngham*, dated the ninth of *May*, in the thirty-fifth year of *Henry the Eighth*; an *inquisitio post mortem* of *Stephen Beckyngham*, dated the fourteenth of *April*, in the first year of *Queen Elizabeth*; two entries in the said

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against
KEYS.

said minister's book of the parish of *Goldhanger*, dated the thirtieth of *December* 1695, and the twenty-fourth of *June* 1698; an extract, dated the fourth of *November* 1647; and on full debate of the matter;

THE COURT ordered a trial upon the following issue, to wit,
 " Whether the lands, in the pleadings in this cause mentioned,
 " of which the defendant is owner and occupier, and from
 " which tithes are demanded by the bill, or any and what part
 " thereof were, at the time of the surrender of the abbey of
 " *Coggeshall*, part of the possessions of the said abbey."

The defendant in equity to be plaintiff at law; to be tried by a special jury; the judge to indorse, &c. with the usual directions.

On the sixth day of *November* 1787, the plaintiff moved for a *new trial*, when the defendant was ordered to shew cause, and upon the twenty-fifth day of *January* 1788, a *new trial* was granted, without allowing any costs of the former trial, some evidence on the part of *Keys* having been improperly rejected.

The rector afterwards agreed to give up his demand of the tithes of the said farm, so long as *Keys*, or any future owner thereof should occupy the same; and the said agreement was on the twelfth of *February* 1788 made an order of the Court; and the bill, pursuant thereto, dismissed with costs.

EYRE, *Chief Baron.*
 HOTHAM, *Baron.*
 PERKYN, *Baron.*

EASTER TERM,
 27. GEO 3.

BRAMSTON against HERON.

London, 7th May 1787.

The impropriator of *St. Botolph without Aldersgate*, in the city of *London*, is only entitled to the tithes on houses, &c. in the parish according to an inquisition taken in the year 1629, and not according to the statute 37 *Hen. 8. c. 12.*

THE lessee of the impropriate rectory of *Saint Botolph without Aldersgate*, in the diocese of *London*, claimed of the defendants two shillings and ninepence in the pound rent, pursuant to the statute 37. *Hen. 8. c. 12.* and the decree therein contained, in lieu of tithes of their dwelling houses, &c. in *Little Britain*, *Barbican*, and *Aldersgate Street*, &c. as in the said bill was mentioned.

The defendants said, that the dean and chapter of *Westminster* were the owners of the inheritance of the impropriate rectory aforesaid; that the plaintiff was their lessee; that the 37. *Hen. 8. c. 12.* had passed, but that the plaintiff was not entitled to the tithes by virtue of the said act and decree, because it appeared by an ancient record in 1629 that a commission had issued to enquire after exacted fees and innovated offices; that on the sixth of *July* 1629, an inquisition was taken at *Trinity Hall*, in *Aldersgate*.

gate Street; that the fees or duties mentioned in the said inquisition, and no more, had been and were taken, for the matters and things therein expressed before 1617; that since that time, viz. in 1620 and since, great fees and duties had been exacted and taken; that the impropiator did not derive his title to the tithes in the said parish, from the said statute of the 37. *Hen. 8.* or the decree therein mentioned, but that the same was founded upon custom and prescription only; that therefore he could not vary the *quantum* of money which had been paid to him from the several ancient houses, according to the improvement of rents, or upon their being rebuilt, nor could he have any claim whatsoever to receive the tithes of houses erected on waste grounds; that there never was any settled rate of payment of tithes in the said parish according to the said act and decree, but that some houses paid four shillings, some five shillings, some six shillings and eightpence, and some higher; that the said dean and chapter were so satisfied that they had no right to the tithes of the said parish under the said statute and decree, that they did not raise their fines on their lessee on renewing his lease, which they would have done very considerably if the tithes of the said parish could have been collected according to the rates specified in the said decree: they admitted, that they were occupiers of the several dwelling houses, as stated in their answer, at such rents, but insisted, that the plaintiff was not entitled to have tithes for them, after the rate of two shillings and ninepence in the pound; but that they had severally paid yearly the several sums, as in their answers are set forth for the same.

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against
HERON.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and upon hearing counsel for all parties; and reading the indenture of lease from the dean and chapter of *Westminster*, to the plaintiff of the impropriate rectory or parsonage of *Saint Botolph without Aldersgate*, dated the ninth of *March* 1784; the proofs taken in the cause on both sides; and on debate of the matter;

THE COURT ordered the defendants to account for the tithes of their several dwelling houses and premises late in their occupations, in the pleadings of this cause, *after the several rates mentioned in their answers*, during the time demanded by the bill, and pay the plaintiff the same, with his costs.

The deputy remembrancer made his report, dated the seventh of *July* 1787, and on the twelfth of *July* the report was confirmed, with subsequent costs.

EYRE, *Chief Baron.*

HOTHAM, *Baron.*

PERRY, *Baron.*

THOMSON, *Baron.*

OWEN

TRIN. TERM,
27. GEO. 3.

OWEN *against* OWEN.

Anglesea, 19th June 1719.

The rector of *Aberfraw*, in *Anglesea*, is entitled to the tithes of hay made on the pasture grounds called *Frwynog*, part of *Tyndryfoel Farm*, although such hay was cut after cattle had depastured on the land.

THE rector of *Aberfraw*, in the isle of *Anglesea*, claimed the great and small tithes arising therein, particularly the tithe of the hay of *Tyndryfoel Farm* since 1784.

The defendant admitted, that in that year he had cut hay upon several parts of his said farm, as in his answer stated, but said, that he had not paid the plaintiff *Owen* the tithes thereof, as being pasture hay cut after cattle had depastured thereon.

The plaintiff replied; the defendant rejoined; witnesses were examined and counsel heard on both sides; and

THE COURT ordered the deputy remembrancer to take an account of what was due for the tithes of hay which had arisen on the fields called *Frwynog* for the year 1784, without costs.

TRIN. TERM,
27. GEO. 3.

THOMAS *against* HUGHES.

Monmouthshire, 25th June 1787.

The rector of *Llanvibangel*, in *Monmouthshire*, is entitled to the tithes of hay, milk, calves, agistment of barren cattle, wool, lambs, colts, poultry, and fruit in kind; but not to agistments on *pasture*.

THE rector of *Llanvibangel Yestern Llewern*, in the county of *Monmouth*, claimed the great and small tithes arising therein, particularly the tithes of hay, grass, clover, herbage, agistment of barren cattle, colts, calves, milk, and lambs.

The defendant admitted, that he had, from 1799, occupied an estate of his own in the parish; that he also rented some land therein; that he had hay and clover arising from his said lands; and that he had not set out or paid tithe thereof in kind, for that there was a custom in the parish, that the owners and occupiers of land therein should pay to the rector at *Easter* yearly twopence for every statute acre or day's math of meadow and grass land, which day's math, according to the custom of the parish and neighbourhood, had been considered as much ground as a man could mow in a day, as *a modus*, in lieu of tithe hay mowed on such lands. The defendant also admitted, that he had on his farm divers horses, mares, and working oxen; but said that they had all been used for the purposes of husbandry and no other, except one of the horses; that he usually rode the said horse to market and about his farm; and that therefore the plaintiff was not entitled to agistment tithe of the said horses, mares, and oxen. He set forth the number of young colts, heifers, and steers which he had bred on the said farm, and used for the plough or pail in the parish, and no other purpose; and insisted, that the plaintiff was not entitled to any tithe for their

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against
HUGHES.

agistment. The defendant also set forth the number of cows he kept, which had calved and yielded milk ; and admitted that he had not set out or paid the plaintiff tithes milk or calves in kind, for that there was a custom, that the owners or occupiers of land therein should pay to the rector at *Michaelmas* yearly, or so soon after as demanded, twopence halfpenny for every cow and calf, and one penny halfpenny for every cow without a calf, as *a modus* in lieu of the tithes of milk and calves had from and produced by such cows. The defendant further insisted, that there was a custom in the parish, that the owners and occupiers of lands therein should pay to the rector, at *Michaelmas* yearly, or so soon after as demanded, the sum of one shilling for every colt or foal had by them dropt in the said parish, as *a modus* in lieu of the tithes of such colt and foal. The defendant set forth the number of sheep he had, but not the quantity of wool ; and said, that the plaintiff had agreed to accept of one penny for the fleece of wool of each sheep, and threepence for every lamb which dropped and lived to be titheable, to prevent disputes, as the defendant occupied lands in another parish, where his sheep also depastured, and some of his lambs might drop, and for which the defendant paid a composition to the incumbent of the other parish of one shilling a-year, and which agreement was binding for the aforesaid years. He further said, that the plaintiff had yearly received of him the tithes of pigs, geese, apples, and pears in kind. He denied, that the plaintiff ever demanded tithes of the grass and clover till the twenty-third of *June* 1784. He also said, that he had not paid the plaintiff the aforesaid *modus*es for the tithes of hay, milk, calves and foals, or the money due upon the aforesaid compositions for wool and lambs, there being an open account subsisting between them.

The plaintiff replied ; the defendants rejoined ; and witnesses were examined on both sides ; and upon hearing counsel on both sides ; and reading divers proofs taken in the cause ; and a letter from the plaintiff to the defendant, dated the twenty-third of *June* 1784 ;

THE COURT directed an issue to try, “ Whether there is now,
“ and, from time whereof the memory of man is not to
“ the contrary, in the said parish of *Llanvibangel Yestern Llewern*,
“ has been an ancient and laudable custom, that owners or
“ occupiers of lands in the said parish should pay and ought to
“ pay to the rector of the said parish for the time being, or his
“ lessee, at *Easter* yearly, or so soon after as demanded, the sum
“ of twopence for every statute acre or day’s math of meadow
“ or grass land, the said day’s math, according to the custom of
“ the parish and neighbourhood, being considered as so much
“ ground as a man can mow in a day, which had been held by
“ them in the said parish, as a *modus* and ancient payment, for
“ and

THOMAS
against
HUGHES.

“ and in lieu and satisfaction of tithe hay by them had, got,
“ and mowed from such lands.”

The defendant in equity to be plaintiff at law ; and the judge at liberty to indorse any thing special.

THE COURT further ordered the deputy to take an account of what was due for the tithes of milk, calves, and agistment, for the time demanded by the bill ; the account of tithe agistment to be taken at the peril of costs, in case it should turn out that such agistment was altogether an aftermath.

THE COURT also ordered the deputy to take an account of what was due for the tithes of wool and lambs from the time aforesaid ; and that if he should find that there had been any agreements between the parties in regard thereto for any part of the time demanded by the bill, to take the account of such tithe according to such agreement.

THE COURT also ordered the deputy to take an account for the tithes of colts, poultry, and fruit from the said time.

The issue was tried, and the plaintiff was nonsuited.

THE COURT therefore, on the twenty-first of *April* 1788, ordered the deputy to take an account of what was due from the defendant for the tithes of hay arising on the lands in his occupation during the time demanded by the bill.

EYRE, *Chief Baron.*
HOTHAM, *Baron.*
PERRY, *Baron.*
THOMSON, *Baron.*

HILARY TERM
27. GEO. 3.

FERRERS *against* PELLATT ; *et è Contra.*

Surry, 28th January 1788.

The rector of *Beddington*, in *Surry*, claims of the defendant the tithes of oats.

THE bill stated, that the plaintiff, in the year 1783, was duly presented to the rectory of *Beddington*, in the county of *Surry*, and was entitled to all the tithes of corn, grain, and all other tithes arising therein ; that the defendant *Pellatt* and others occupied lands therein, upon which they had grown oats and other corn and grain, the tithes of which they had refused to pay under a pretence that *Pellatt* was entitled to the tithes of oats. The bill therefore prayed an account and payment.

The defendant states, that the manors of *Bed-*

The defendant *Pellatt* admitted, that the plaintiff was rector of the parish, but denied, that he was entitled to all the tithes of *Beddington*, *Raveisbury*, *Bandon* and *Norbury*, a mansion house, a park, and a portion of tithes in *Beddington*, had been forfeited to the crown by *Sir Nicholas Carew* ; that they were granted by *Queen Mary* to his eldest son *Francis Carew*.

of

of corn, grain, and other titheable things arising in the said parish; for that *Queen Mary* had by her letters patent, dated the fourteenth of *January*, in the first year of her reign, granted to *Francis Carew*, the eldest son of *Sir Nicholas Carew*, knight, deceased, the manor or lordship of *Beddington*, *Ravesbury*, *Bandon*, and *Norbury*, a capital messuage, a park in *Beddington*, the advowson of the rectory of *Beddington*, and all that portionary of *Beddington*, and divers lands and hereditaments in *Beddington*, and other places in the said county, then late the estate of *Thomas Lord Darcy*, and before of *Sir Nicholas Carew*, and which had been forfeited to the crown by his attainder; that the estates so granted to the said *Francis Carew*, or a great part thereof, and particularly *the Portionary*, had by divers lawful ways and means become, in *July 1762*, vested in *Sir Nicholas Hackett Carew, Bart.* since deceased; that *Sir Nicholas*, by his will dated in that month, devised all his manors, messuages, lands, tenements, rents, advowsons, and hereditaments whatsoever to the defendant in trust, as in the will was mentioned; that the said *Francis Carew*, under the said grant, had been in possession of the estates thereby granted, and particularly of *the Portionary*; that the same was, in the forty-second year of *Queen Elizabeth*, the property of *Sir Francis Carew, Knight*; that *Sir Francis*, by indenture, dated the tenth of *October* in the said year, made between him and *Richard Worde, Clerk*, parson of *Beddington*, demised to him all that mansion house in *Beddington* (the house now occupied by the plaintiff, or an house on the same scite), and divers parcels of land therein, then also in the occupation of the plaintiff, and all the said *Sir Francis Carew's* portion of tithes therein, and a barn next the brewhouse in the yard, to hold to the said *Richard Worde*, for forty years, paying to him yearly two pounds, three shillings, and fourpence, and delivering at the barn door in his yard all the tithe straw, both of wheat and rye, growing within the said parish, and seven quarters of wheat, four quarters of rye, and thirty quarters of barley; that the said *Richard Worde* thereby granted to the said *Sir Francis Carew* all the tithe oats, except the tithe of the glebe lands and portionary whilst in the said *Richard Worde's* own occupation; that by virtue of the said demise he had enjoyed the said mansion house and premises thereby demised, and had paid the rents thereby received, and permitted the said *Sir Francis* and his heirs, &c. to receive all the oats within the said parish; that similar leases had been granted by the *Carew family*, or their trustees to the successive rectors of the parish for several years, who had received from such rectors the rents reserved thereon, and all the tithes of oats within the parish; that the plaintiff enjoyed the house and land, part of the said portion, and the tithes belonging thereto; that the

ant, as devised in trust, was thereby entitled to the tithe of oats; said.

FRANCIS
against
PELLATT;
et al Contra.

that part of the said estates, particularly the portionary, had vested in the late *Sir N. H. Carew*, who had devised the same to the defendant in trust;

that *Francis Carew*, while the said estates were in his possession, had demised the mansion house and lands in the possession of the plaintiff, together with the portionary to the rector of *Beddington*, reserving the tithe straw and certain quantities of wheat, rye, and barley;

that the rector granted to *Sir Francis* all the tithes of oats, except of the glebe and the portionary while in the rector's occupation;

that similar leases had been made between the *Carew family* and succeeding rectors;

that the defendant, as devised in trust, was thereby entitled to the tithe of oats;

said.

FERRERS
against
PELLATT ;
et Contra.
 that the plaintiff
 had cut down
 timber belonging
 to the portion ;
 that he, the de-
 fendant, rented
 the lands of
 which he had ta-
 ken the tithe
 oats from the
Carew family.

said defendant, as devisee in trust, was entitled to receive all the tithes of oats within the said parish. The defendant then stated, that the plaintiff had cut down and sold divers timber and other trees on the land belonging to the portion, for which he ought to answer to him as devisee in trust. The defendant further stated, that he, the defendant, occupied land in the parish, on which he had sowed oats, and had not only cut and carried the same away from the said lands without setting out the tithes thereof, but also from the lands of the other defendants, he having rented the same of the *Carew family*, as in his answer stated.

The defendant *Smith* and others said, that they were assignees with the defendant *Pellatt* of *John Dewey Parker* ; that *Parker* was at the time of his bankruptcy in the occupation of lands in the said parish, which had been sown with oats ; the tithe of which had been paid to *Pellatt*.

that no rector
 had for many
 years received
 the tithes of
 oats ;

The defendants *Hilbert* and *Bristow* said, that *Sir N. H. Carew*, deceased, and his ancestors, had for several years past held and enjoyed all the tithe oats, and had received such tithe ; that after his death the defendant *Pellatt* had, as devisee in trust, &c. enjoyed the same ; that no rector had for many years past received such tithes of oats ; that they had held land in the parish ; that oats had been growed thereon ; and that the tithe thereof had been paid to the defendant *Pellatt*.

that for the lands
 within the Park
 there was a *modus*
 of 10l. a-
 year in lieu of
 the tithes there-
 of ;

The defendants *Blake* and *Charrington* said, that they held lands within the pales of the park belonging to the mansion house and estate at *Beddington*, late the estate of *Sir N. Carew* ; that they had always understood that such land had not paid tithes in kind to the rector of the parish ; and that the said lands had been let to them exempted and discharged from the payment of tithes ; that they had growing thereon oats and other corn and grain ; and that no tithes had been claimed of the same by the plaintiff : and they set up a *modus* of ten pounds a-year to the rector, by the owner or occupier of the mansion house, garden, and park at *Beddington*, late the estate of *Sir N. H. Carew*, in lieu of all tithes yearly arising in respect of such mansion house, garden, and park.

The defendant *Durand* said, that the tithes of oats upon the lands he held in the parish had been always claimed by the defendant *Pellatt* as aforesaid, who had regularly received the same ; and he insisted, that the plaintiff was not entitled to the same.

that they had no
 evidence but that
 stated in the an-
 swer ;

The defendants *Carew* and *Fountayne* spoke to the same effect as *Pellatt* had done, respecting the letters patent, will, &c. and said, that the only evidences and documents they had were two instruments of *inspeximus*, one dated the twenty-second of April
 in

In the twenty-eighth year of *Queen Elizabeth*, and the other the tenth of *June* in the forty-second year of the said queen, of a roll of this court, dated in *Easter Term*, in the twenty-sixth year of the said queen, as in the said answer set forth.

FERRERS
against
PELLATT;
et c. Contra.

The plaintiff replied; the defendants rejoined; and several witnesses were examined in town before a BARON on behalf of the defendant *Pellatt* and others; and the cause came on to be heard on the nineteenth day of *July* 1786; and being fully gone into by counsel on both sides, it was ordered to stand over for further hearing; and that in the mean time the defendants *Pellatt*, *Carew*, and *Fountayne* should file a *cross bill* against *Ferrers*; and that both causes should come on together.

The cause
heard;

and the trustees
of Sir N. H. Ca-
rew ordered to
file a *cross bill* a-
gainst the rector,

THE COURT further ordered, that the said *W. Pellatt*, *R. G. Carew*, and *J. Fountayne* should dismiss their bill in chancery against *Ferrers*, with costs, to be taxed for the defendant: and in pursuance of the said order the said bill was dismissed.

and to dismiss
their bill in chan-
cery, with costs.

The said *W. Pellatt*, devisee in trust named in the will of Sir *N. Carew*, deceased, *R. G. Carew*, and *J. Fountayne*, D. D. did, in pursuance of the said order, exhibit their *cross bill* against *J. B. Ferrers*, clerk, rector of *Beddington*, stating, that her late majesty *Queen Mary*, being seised of the advowson, donation, free disposition, and right of patronage of the rectory of the church of *Beddington*, otherwise *Bedynton*, and being also seised of a portionary, consisting of a messuage and buildings, glebe lands, and tithes in *Beddington* called the *Portionary of Beddington*, by letters patent, dated the fourth of *January* in the first year of her reign, granted such advowson, and also such portionary by the description of all "her portionary of *Bedynton*, in "the county of *Surry*," to *Francis Carew*, eldest son of Sir *N. Carew*, knight, deceased, and to his heirs and assigns for ever; that by virtue of such grant the said *F. Carew* was in possession of the said portionary; that by indenture, dated the tenth of *October*, in the forty-second year of *Queen Elizabeth*, made between Sir *T. Carew*, Knight, and *Richard Worde*, clerk, parson of *Beddington*, he demised to him the said portionary, by the description of all that mansion house in the occupation of the said *Richard Worde*, in *Beddington*, with all the barns, stable, &c. as in the said bill is set forth; that by virtue of such lease he entered upon and enjoyed the said portionary; that upon the demise of the said *R. Worde*, similar demises had been made to *J. Nelme*, his successor; that under such demises the rectors thereof, from time to time, had enjoyed the mansion house, glebe lands, and tithes belonging to the portionary, and paid the rent reserved by the leases in money, and also the straw and corn reserved in specie, and permitted the said Sir *F. Carew*, and the several persons claiming under him, to receive all the tithes of oats within the said parish, except as in the said leases were ex-

The cross bill
stated the grant
from the crown

of the mansion
house and the
portionary,

the agreements
made between
the owners of
and the rector;

that successive
agreements had
taken place with
successing rec-
tors;

FERRERS
against
PELLATT;
et contra.

that the boundaries of the portionary could not be exactly ascertained;

that certain surveys had been made;

that Ferrers was in possession of the whole glebe, and also of other lands;

cepted; and that the said family had received the same till lately, when *Mr. Price*, the former rector, made some dispute respecting the same; that such tithe oats had been constantly taken by the plaintiff *Pellatt*, and those under whom the said plaintiffs claimed; that although the plaintiffs were unable to ascertain the said portionary with precision, yet the defendant could; that the same consisted of the house which the defendant was in possession of, and some glebe lands, and especially the lands called *the Sharpes*, and certain particular tithes; that by a survey of the said rectory and portionary, taken pursuant to the statute made in the twenty-sixth year of king *Henry the Eighth*, it appeared that the portionary was then of the clear yearly value of eighty pounds, twelve shillings; that the *Carew* family, and their trustees, and particularly the plaintiffs, had constantly paid seventeen shillings and twopence halfpenny, for the tenth of such portionary; that the defendant had several writings, &c. in his custody, and particularly of the said *Mr. Price*, in which the rent of two pounds, three shillings, and fourpence, and the tithe straw, wheat, rye, and barley, were mentioned; that the *Carew* family were entitled to such portionary; that the glebe belonging to the rectory consisted of twenty-five acres and one rood only; that the same appeared by an entry in the registry of the commissary court of the bishop of *Winchester*, viz. "an exemplification of twenty-five acres one rood of glebe land, anciently belonging to the rectory of *Beddington*, in *Surry*;" also by an ancient terrier book of the lords of the manors of *Bandon*, *Beddington*, and *Wallington*, viz. "Imprimis, in *Gotely*, in the south-west corner, one acre, ITEM, in the south part of *Westnell*, in a plot called *South Longe*, two acres; in *Westoverdon*, one acre; a grove called *the Parson's Grove*, lying on the east part of *Green Way*, three acres; a piece of sixteen acres, lying in part by north of the said green, great stones lying between *Bandon Way* west, and the lands of *Wadden* east; one acre between *Bandon Way*, *Green Street*, west, *Croydon Way* north, and to the common fields south, one rood; ITEM, one acre in *Wallington Common Fields*, south, lying towards the upper part of the *Hollow Way* and the *Smoke Plot* east. *Richard Worde*, minister, *Thomas Haller* and others, churchwardens: dated the eighth of November 1616, et *Jacobi Reg. Angliæ Anno*;" that the defendant was in possession of the twenty-five acres, and one rood of land, so described; such lands were the whole glebe land belonging to the said rectory; that the defendant was in possession of a much greater quantity of land, and particularly the land mentioned in the leases to the rectors, and especially the lands called *the Sharpes*; that he had refused to pay such rent of two pounds, three shillings, and fourpence, and to deliver such straw and grain as aforesaid, or to permit the plaintiff *Pellatt* to receive

receive such tithe of oats; that he had refused to deliver up possession to him of so much of the said portionary as was in his possession; that he had actually cut down divers timber trees, walnut trees, and other valuable trees which grew on the lands belonging to the said portionary, and particularly on *Sharpe's Lands*, and threatened to commit further waste thereon. The bill therefore prayed, that the defendant might be decreed to account for and pay to the plaintiff *Pellatt*, as trustee in the said will of *Sir N. H. Carew*, the said rent of two pounds, three shillings, and fourpence, and all the tithe straw, both of wheat and rye within the said parish, and seven quarters of wheat, four quarters of rye, and thirty quarters of barley, and might also permit the said plaintiff to receive the tithe oats within the said parish, and account for the tithe of oats received by him within the said parish, or by any person or persons for his use, on his account, or by or with his direction or privity, so that the plaintiff might have the benefit of the agreement, which had subsisted as aforesaid between the *Carew* family and the successive rectors of *Beddington*, since the said lease from the said *Sir F. Carew* to the said *Richard Worde*; that proper leases might be executed for such purposes, or that the defendant might be decreed quietly to deliver up the possession of the said portionary to the said plaintiff, and to account for the profits thereof accrued since his possession thereof to the said plaintiff, accounting in like manner for the tithes belonging to the said rectory possessed by him as aforesaid; that, for that purpose, the nature and extent of the said portionary might be ascertained by and under the decree of this court; that a commission might issue for that purpose if necessary; and that the said defendant, and all and every his agents, servants, or workmen, and all and every person and persons employed by or in the service of the said defendant, might be restrained by the order or injunction of this court from felling or cutting any more of the said timber trees, walnut trees, or other trees growing on the lands belonging to the said portionary, and particularly the lands called *the Sharpes*, or from committing or causing to be committed any further waste, spoil, or destruction on the said lands, or any part thereof, and also from receiving any more of the tithe of oats within the said parish, until the hearing of this cause.

FERRERS
against
PELLATT;
et d. Contra.

that he had refused to deliver up the extra land, and had committed waste in the portionary. The bill therefore prays, &c.

The defendant admitted, that *Queen Mary* was seised of the advowson, donation, free disposition, and right of patronage of the rectory of the church of *Beddington*; but denied, that she was, to his knowledge, seised of the said portionary, &c. or of such demises as stated in the bill; and said, that the rectors for the time being had, as such, time out of mind, or more than one hundred and fifty years last past, occupied and possessed a mansion house in *Beddington*, and certain glebe lands then in

The rector admits, that he occupies a mansion house, garden, and a quantity of land, but insists, that it is the parsonage house, and the glebe lands there-

to belonging, and that he is entitled to the tithes of oats and other tithes throughout the parish.

FEARNS
vs
PELLATT;
as i. Curia.

his possession; that *Pellatt* had set up some claim to the tithe of oats within the said parish, and to hold certain lands within the same tithe free; that in 1783 he requested him to shew under what title he claimed the same, which he refused to do; that he thereupon gave him notice, that he should demand tithe oats throughout the said parish, conceiving that the same belonged to him, as rector of common right; and he insisted, that although *Pellatt* had received the tithe oats of some of the occupiers, he had no right to the same. He also admitted, that ever since his induction into the rectory, he had, either by himself or tenants, been in possession of the said house and lands in *Beddington*; that he claimed the same as the parsonage house and glebe lands belonging thereto, the same having been held as such by his predecessors; that the house had been called *the Portionist's house*; but that he was unable to ascertain the particulars of the same, or whether it was the original parsonage house or not; that he had taken the tithe of oats from some of the occupiers, or received compositions for the same; and he insisted, that, as rector of the parish he was entitled so to do; and that the plaintiffs were not entitled to have any account thereof from him; but that he was entitled to retain the same, and to hold the quiet possession and enjoyment of the parsonage house and glebe lands, against all claims of the plaintiffs thereto; and that if they had any claim thereto, they should proceed at law to recover the same. He said, that he had seen a copy of an entry from a book in THE FIRST FRUITS OFFICE, viz. "the twenty-sixth year of *Henry the Eighth*, *Beddington Portion*, " *valet clare per annum, cum omnibus proficiis et commoditatibus* " *ultra reprisis*, £8. 12s.; but he denied, that he knew any thing of the other matters in the bill.

The causes
heard.

The plaintiffs replied; the defendants rejoined; and upon hearing counsel in both causes for all parties; and reading the following evidence for the defendants in the original cause, viz. letters patent, dated the fourteenth of *January*, in the first year of *Queen Mary*, being a grant to *Francis Carew, Esq.* eldest son of *Sir N. Carew, Knight*, then deceased; an *inspeximus* of a roll, No. 159, of an information of intrusion, filed by the queen's attorney general in *Easter Term* in the twenty-sixth year of *Queen Elizabeth* against *Richard Worde*, clerk; a copy of the exemplification of the glebe lands of the rectory of *Beddington*, dated the eighth of *November* 1616, extracted from the registry of the bishop of *Winchester*; the probate of the will of *Sir N. H. Carew*, bart. deceased, dated the first of *July* 1762; and reading all the depositions of witnesses on behalf of the defendants; and on full consideration had thereon;

A commission
issued to ascer-
tain the lands of
which the por-
tionary consist.

THE COURT ordered a commission to issue to enquire into, ascertain, and distinguish by proper descriptions of what *the Portionary of Beddington*, in the pleadings mentioned, consisted, and

and in whose possession the particulars, which the commissioners shall find to be parcel of such portionary, now are.

The causes came on to be reheard upon the petition of the plaintiff *Ferrers*, pursuant to an order of court, dated the fifteen of *May* last; and upon hearing counsel for all parties; and reading the said order and petition, the causes were, on the twenty-second of *June* 1789, ordered to stand over; and that in the mean time *Robert Pardoe*, *John Vernon*, and *R. Barnes*, the commissioners, do return the evidence and proofs taken by them on the special commission, and annex such evidence and proofs to the commission and certificate returned into this court.

FERRERS
against
PELLATT;
or *Contra*.
The commission-
ers ordered to re-
turn the proofs
and certificate.

On the twenty-seventh of *June* 1791, the causes came on to be reheard on the petition, commission, and certificate; and upon hearing the like counsel; and reading the decree, dated the twenty-ninth of *January* 1788, and the order for the rehearing and petition, as also the commission and certificate returned thereupon; and on full date thereon had;

The cause re-
heard.

THE COURT ordered the certificate of *Robert Pardoe*, &c. dated the twelfth day of *December* 1788, to be ratified and confirmed, but without prejudice to the right of *W. Pellatt*, to any other part, if there be any, of the portion of *Beddington*, the said defendant shall hereafter be able to ascertain.

The commission-
ers' certificate
confirmed with-
out prejudice.

THE COURT further ordered the deputy to take an account of the tithes of oats, which the defendant *Pellatt* and others had, at any time since the month of *January* 1783, when the plaintiff was inducted into the rectory of *Beddington*, reaped, mowed, or cut down, on any lands in the parish in their occupations respectively, other than and except on those lands, which had been certified by the commissioners to belong to the Portion of *Beddington*, as described particularly in the certificate.

The deputy or-
dered to take an
account of tithe
oats, except what
had arisen on the
portionary;

THE COURT further ordered the deputy to take an account of the tithes of oats, which *William Pellatt* had, since the month of *January* 1783, had or taken from any lands within the said parish, except as aforesaid, which had been in the occupation of any other person or persons.

and also of the
tithe *Pellatt* had
received;

THE COURT further ordered, &c. that he take an account of the tithes of wheat, barley, oats, beans, peas, and also of the corn and grain which the defendant *G. Charrington* had, at any time since the said month of *January* 1783, grown, reaped, cut, or mowed on any lands within the said parish, in his occupation, except on such lands as aforesaid.

and also of the
tithes of the *Park*.

And it appearing to the Court, that the lands in the occupation of the defendant *A. Blake* were part of the lands described

The bill dismiss-
ed as to the tithes
of the Portionary
Lands.

FERRERS
against
PELLATT;
et c. *Contra.*

by the commissioners in their certificate, and therein certified to belong to *the Portion of Beddington*;

THE COURT thereupon ordered the original bill to be dismissed, as against *A. Blake*.

The rector ordered to deliver up the mansion house, garden, and orchard, and to pay a sum for the rent thereof to *Pellatt*.

THE COURT further ordered *J. B. Ferrers* to deliver up to *W. Pellatt* the possession of the mansion house, garden, and orchard, described in the certificate as belonging to the said portion; and the deputy remembrancer to fix an annual sum by way of rent for the house, garden, and orchard, to be paid or allowed to *W. Pellatt*, for the time during which *J. B. Ferrers* had occupied the said premises, and out of which annual rent the deputy is to allow *Ferrers* all such sums of money, as he shall have expended from time to time in necessary repairs of the said premises; and what if any thing shall remain due to *Pellatt*, in respect of such annual rent, the deputy is to deduct out of what shall be due upon the account of the tithes before directed to be paid by *Pellatt* to *Ferrers*.

The deposit to be returned to the rector.

THE COURT further ordered the deputy to pay back to *Ferrers* the sum of ten pounds, being the deposit money paid by him into his hands, pursuant to the order of court, dated the fifteenth of *May 1789*, for rehearing.

THE COURT did not decree costs on either side.

The deputy makes his report.

The deputy made his report, dated the first of *April 1793*, to which *Pellatt* took an exception; and now upon hearing counsel on both sides; and reading the said decrees, report, and exception, and also the examination of the said plaintiff, and the affidavit of *M. Searles*; and on full debate of the matter thereon had; the exception was over-ruled, with costs, and the report confirmed.

Pellatt ordered to pay 131*l.* 12*s.* for tithe oats.

THE COURT further ordered *Pellatt* to pay to *Ferrers* one hundred and thirty-one pounds, twelve shillings, reported due to him for his tithe of oats produced from lands in the parish not belonging to *the Portion of Beddington*, since the month of *January 1783*, and of the tithe of oats taken since *January 1783*, from lands within the parish, not belonging to the portion, which were in the occupation of other persons.

Charrington ordered to pay 192*l.* 6*s.*

THE COURT further ordered *G. Charrington* to pay one hundred and ninety-two pounds, six shillings, for the value of the tithes of wheat, barley, and oats produced upon the lands in the parish of *Beddington*, in his occupation, not being parcels of the portion mentioned in the said decree, since the month of *January 1783*, and so reported due.

Costs.

THE COURT further ordered the deputy remembrancer to tax the said plaintiff his costs of the said exception, and which costs are to be paid by the said defendant *Pellatt* to the said plaintiff.

The

The deputy certified the rent of the house, garden, and orchard, at thirty pounds *per annum*, which for nine years amounted to two hundred and seventy pounds; that the plaintiff had expended in necessary repairs about the mansion-house to belong to *the Portion of Beddington* three hundred and eighty pounds; and that the amount of the rent falling short of the repairs, the plaintiff was entitled to retain the whole of the rent in part satisfaction of the said sum so expended for repairs.

FERRERS
against
PELLATT;
et Contra.

MACDONALD, Chief Baron.
HOTHAM, Baron.
PERRY, Baron.
THOMSON, Baron.

LORD COVENTRY *against* BURSLEM.

EASTER TERM
25. GEO. 3.

Worcestershire, 14th April 1788.

ON hearing counsel in this cause, it was ordered to be adjourned, with liberty to the plaintiffs to amend their bill, by adding parties thereto, on payment of five pounds costs of the day. The amended bill stated, that the plaintiff the *Earl of Coventry* was owner of certain tenements, with lands thereto belonging, in the parish of *Hanbury*, in the county of *Worcester*, called *Fakenham Lodge*, *the Great Park Farm*, and *the Little Park Farm*; that the plaintiff *Bearcroft* was owner of certain messuages, with the lands thereto belonging, situate in the parish, called *Meer Green, &c.*; that the greatest part thereof were in the occupation of his tenants, and the other part in his own occupation; that the plaintiffs *Barnes* and *Hayward* were occupiers of *Lower Goose Hill Farm*, of *Kettle's Farm*, and of other messuages and lands in the parish, whereof the plaintiff *Bearcroft* was owner; that the defendant *Burslem* was, in 1780, lawfully presented to the rectory of *Hanbury*, and entitled (amongst other tithes and dues) to the *modus* which had been usually paid by the owners and occupiers of messuages and lands therein to the rector thereof; that the defendants *Cecil* and *Emma* his wife had been seised of or well entitled to the advowson of the rectory; that the defendant *Vernon* was seised of, or well entitled to, an estate tail in remainder, or of some good estate of inheritance in remainder, in and to the said advowson; that there then were, and from time whereof the memory of man was not to the contrary had been, divers ancient and laudable customs within the said parish, that the owners and occupiers of messuages or tenements and lands therein should pay yearly at *Michaelmas*, or as soon after as the same was or could be demanded, for the use of the rector, one penny for every milch cow kept, fed, and depastured, on their respective messuages or tenements and lands

The landhold of the parish of *Hanbury*, in *Worcestershire*, file their bill against the rector, the patron, the reversioner, and the ordinary of the rectory, to establish certain *modus* in lieu of the tithes of milk, agistment, calves, lambs, wool, colts, and hay.

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within the said parish, as a *modus* in lieu of the tithe of milk of such cow ; one penny for every cow that is a feeder, kept, fed, and depastured on their respective messuages or tenements and lands within the said parish, as a *modus* in lieu of the tithe of the agistment of such cow ; fourpence for every calf calved on their respective messuages or tenements and lands in the parish, as a *modus* in lieu of the tithe of such calf ; one penny for every lamb fallen on their respective messuages or tenements and lands in the parish, as a *modus* in lieu of the tithe of such lamb ; one penny for every fleece of wool shorn on their respective messuages or tenements and lands in the parish, as a *modus* for and in lieu of the tithe of every such fleece ; sixpence for every colt foaled on their respective messuages or tenements and lands within the said parish, as a *modus* in lieu of the tithe of every such colt ; one shilling and twopence for every day's math of hay or grafs mowed and made or converted into hay on their respective messuages or tenements and lands in the parish, each day's math containing and amounting to one acre and a half of land, as a *modus* in lieu of the tithe hay of every such day's math of grafs ; that the said *moduses* had been invariably and immemorially accepted by the former rectors, and by the defendant *Burslem* ; and that the plaintiffs were ready and willing, as they always had been, to pay them, and which *Burslem* had refused to accept. The bill therefore prayed, that the said several *moduses* might be established against *Burslem*, as rector of the parish, and against the other defendants as the owners of the advowson.

The rector, the patron, and the reversioner, deny the existence of the *moduses*, and insists on the tithes, both great and small, *in kind*.

The defendant *Burslem* claimed all the tithes *in kind* of corn, grain, hay, and other great and predial tithes, and also all small tithes whatsoever arising therein ; and denied the *moduses* set up by the plaintiffs.

The defendants *H. Cecil* and *Emma*, as owners of the advowson, also denied the existence of the said *moduses*.

The defendant *Vernon* admitted, that the plaintiffs were owners and occupiers of lands in the parish ; that *Burslem* was rector thereof ; that *Cecil* and his wife were seised in possession for the life of the said *Emma*, with remainder to her issue in tail of the advowson of the rectory ; and insisted, that he, the defendant, as deriving a title under the respective wills of *J. Vernon*, deceased, late father of the said *Emma*, and of *J. Vernon*, his great uncle, deceased (formerly owner of the said advowson), and as the heir male of the said *J. Vernon*, and *J. Vernon*, or one of them, was entitled, in reversion or remainder, to a contingent estate tail of inheritance in the said advowson ; but he denied all knowledge of the several *moduses* set forth in the bill.

The

The *Bishop of Winchester* answered, as ordinary of the parish-church of *Hanbury*; but did not claim any interest, either as ordinary of the church or otherwise, in the several matters contained in the bill; and said, that no application had ever been made to him to establish or concur in establishing the said *modus*; but that he was ready to act in such manner touching the same as the Court should think fit.

LORD
COVENTRY
against
BURLEIGH.

The plaintiffs replied; the defendants rejoined; and witnesses were examined on both sides; and upon hearing counsel for all parties on the twenty-third day of *November* 1783; and on reading several depositions and receipts for the plaintiff; a book of entries by *C. Lewes*, the renter of the tithes; several depositions and receipts on behalf of the defendants; and on debate of the matter; the cause was adjourned.

The cause
heard;

and adjourned.

The cause came on now to be further heard on the twenty-fifth of *April* 1788; and on hearing counsel for all parties; and reading several depositions taken in the cause; and receipts signed by *G. Vernon*, the former rector of the parish of *Hanbury*;

The cause re-
heard.

THE COURT ordered, by consent, that the plaintiffs be at liberty to further amend their bill, by striking out such part as prays the establishing the several *modus*, and making the same a bill to perpetuate the testimony of their witnesses to prove the several *modus* aforesaid; that the testimony of all and every of the plaintiffs witnesses examined in this cause be recorded and perpetuated in this court; that the plaintiffs, and all and every person and persons claiming, or who shall claim under them, any or either of them, shall, at all times hereafter, have the full benefit and advantage of such testimony; and that the said plaintiffs do pay to the several defendants in this cause the costs of this suit to be taxed by the deputy remembrancer.

By consent, the
Court order the
bill to be made
a bill for perpe-
tuating the tes-
timony of wit-
nesses.

EYRE, *Chief Baron.*
HOTHAM, *Baron.*
PERRY, *Baron.*
THOMSON, *Baron.*

SMITH *against* ILBERTON.

Northumberland, 9th June 1788.

TAIN. TERM,
28. GEO. 3.

THE bill stated, that the plaintiff, in *August* 1779, was presented to the rectory of *Ilberton*, in the county of *Northumberland*; that he thereby became entitled to all the perquisites, profits, and emoluments, arising therefrom, particularly to certain glebe lands in the township of *Ilberton*, and part of the *Infield* lands

The glebe lands
belonging to the
rectory of *Ilber-*
ton, in *North-*
umberland, set out
and ascertained
under a commis-

sion; but quare as to a right of *pasturage* claimed by the rector in the heaths, waste grounds, and commons of the parish.

in

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against
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in the said township; that besides *the glebe lands*, the rectors thereof, till lately, immemorially enjoyed a *right of pasturage* on the heaths, commons, and waste grounds, or on the field lands belonging to the said township, in common with the owners of the rest of the lands therein; that such glebe lands and right of pasturage had been, from time to time, let by the rector of the parish to the tenant or tenants of the owner of the rest of the lands in the township; that the township contained several thousand acres; that great part thereof lay open and uninclosed, and consisted of waste land which had never been ploughed or cultivated, called *heath*; that some inclosures were made of the same; that some part of the glebe lands lying interspersed and uninclosed had been taken in; that by such means the marks, traces, or boundaries thereof, had been lost, defaced, or removed; and that the defendant had in his custody maps, &c. by which he could describe the metes and boundaries of *the glebe lands*: and he set forth a terrier of *the glebe lands* appertaining to *Iderton* church, from the registry book in 1675; and said, that thirteen pounds *per annum* might have been the full value of the said glebe lands. The bill therefore prayed, that an account might be taken of *the glebe lands* and stints so belonging to the rectory; that the several marks, boundaries, and abuttals by which the said lands had been separated or distinguished from other lands in the said township might be ascertained and repaired, and the lands put into the same condition as they were in before such inclosures and ploughing; that if such marks, boundaries, and abuttals of *the glebe lands*, or any of them, could not be ascertained, or *the glebe lands* discovered, that a suitable and proper quantity of land or ground of the said defendant might be set out or allotted in lieu thereof, and as near as might be of equal value thereto; that a survey or valuation of the whole lands or grounds within the township might be taken, and one tenth part thereof set out to the plaintiff as rector thereof, or such other part thereof as, according to the proportions of *the glebe lands*, were to the rest of the said township, or in such other manner as the Court should direct; and that one or more commission might be awarded by the Court for that purpose; that an account might be taken of the full and true yearly value of the said several glebe lands and stints at and since the plaintiff became rector, or at least from *Whitsuntide* 1780; that an account might be also taken of the several sums of money which had been paid by the defendant *Dartiquenave* to the plaintiff on account of rent; that what should happen to be due to the plaintiff on account of such rent, during the time according to the improved or increased value thereof, over and above what should appear to have been so paid to the plaintiff on account of such rent, might be paid to the plaintiff by the defendants or one of them; and that the possession of what
should

should be found to belong to the rectory might be delivered up to the plaintiff.

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against
ILDERTON.

The defendant *Ilderton* said, that none of the former incumbents of the parish were entitled to, or had ever enjoyed, any tithes of corn or grain arising in the parish; that there had not been immemorially such glebe lands belonging to the church of *Ilderton*, as in the bill were specified; that if there ever had been any glebe lands specifically set out and enjoyed in the said township, they must have been given or surrendered up to the defendant's ancestors by some legal or proper authority; that an annual sum of twelve pounds was paid to the incumbent in lieu thereof; and that such sum had been yearly paid to the incumbent accordingly. He further said, that he knew not of any particular piece or parcel of land belonging to the incumbent of the said church, except the church-yard. He also said, that none of the incumbents of the said church had at any time whatever been used or accustomed to have *right of pasturage* on any heaths, commons, or waste grounds, in and belonging to the said town of *Ilderton* in respect of their glebe lands; that there never was, within the memory of man, any common or waste ground in the said township upon which any person had right of common, for that he and his ancestors, for many generations, had been in the peaceable, uninterrupted, and exclusive possession and enjoyment of the whole township of *Ilderton*, and of *the Infield Lands* and *Outfield Lands*; and that the incumbents of the said church never enjoyed any right of pasturage in *the Outfield Lands* of *Ilderton*, called in the bill *Commons* or *Wastes*, except in cases where stints or depasturage had been taken to farm by the incumbents for the time being of the said church of and from the owners of the said township. He denied, that *the glebe lands* were, to his knowledge, let; and he spoke as to the inclosures, and as to various other matters respecting the township; the terrier, the plans, and the surveys, which he had in his custody respecting the plaintiff's claim to *the glebe lands*: and he set forth the value of the township.

The defendant *Dartigueuave* said, that he was tenant of the said township to the defendant *Ilderton*; and spoke much to the same effect as the defendant his landlord had done.

The answers of the defendants *the Duke of Northumberland* and *Earl Percy* were taken without oath: *the Duke*, admitted, that he, as tenant for life, was the true and lawful patron of the rectory of *Ilderton*; that the defendant *Earl Percy* was the first remainder-man in tail of the said estate, to which the said right of advowson belonged; that his, *the Duke's*, father presented the plaintiff to the living; that he was duly instituted, &c. thereto, and as such was entitled to the tithe of hay arising in the parish; that he was also seised of, or entitled to, a considerable quantity

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quantity of *glebe land* lying therein, consisting of several parcels of ridges, as specified in the bill, and which had been, for many years past, let to the *Ilderton* family; that the boundaries which marked out and distinguished *the glebe lands* of the rectory from the other lands of the defendant *Ilderton* had been, by him or his tenants, confounded or destroyed, so as to render it difficult to know or ascertain the same; but whether it had been done fraudulently by them he could not say: and he said that he was a stranger to the other matters in the bill.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and upon hearing counsel for all parties; and reading several depositions and receipts for the rent of *the glebe lands*, and a lease dated the twenty-first of *September* 1779 from the defendant *Ilderton* to the other defendant; and the answer of the defendant *Ilderton*; a copy of a terrier, by consent, signed *William Maxwell*, register from the registry of *Durham*, dated the nineteenth of *June* 1732; a paper writing, being a list of *the glebe lands* in the plaintiff's possession, from a schedule to the bill; and on full debate of the matter;

It appeared to the Court by the evidence, "That certain parcels
" of land, called *the Eight Ridges* of arable land in *the Canny Yards*,
" lying south and north, with three headlings thereunto belonging
" adjoining the vicarage-house; six ridges in *the Wooberslaw*,
" lying north and south; two ridges in *the Horse Keimb*; a
" butt between *the two Keimbs*; a butt adjoining two ridges
" in *the North Keimb*; two ridges in *the Harelaw*, lying south and
" west; a ridge in *the West Flatt*, lying south and north; two
" ridges in *the Winter Letch*, lying south and north; two ridges
" in *the Milne Flowers*, lying west and east, with a gusset; two
" ridges in a han, lying north and south; four ridges in *Whom-*
" *law*, lying west and east, in a fan; three ridges in *the Fermat*
" *Hole*, lying west and east, with a gusset; two ridges in *Twilley-*
" *law*, west and east; five ridges in *the Semelet Bush*, lying north
" west and south east; nine ridges in *the Aurorowp*; five ridges
" in *the Croop*; two ridges in *the Hemperlands*; and two in
" *the Crook Lands*; three ridges in *the Street Side*; and *the*
" *Headling in the Donald Gate* or street; five ridges and one
" headling, and two fallow ridges with an hedge about them,
" lying north and south, or parcel of ground adjoining *Mr.*
" *Ilderton's Demesne*, with a form of a hedge round about the
" ground; the ridges within the hedge, lying south and north,
" excepting four, lying west and east, commonly known or called
" by the name of *Lillslaw*, containing, in length and breadth,
" eight acres, within the value; and two dales of meadow in
" *Rosedon*;" referred to by the schedule to the bill, are glebe
lands belonging to the rectory of *Ilderton*, and now in the pos-
session of the defendant *C. P. Dartiquenave*, as tenant thereof to
the

the said defendant *J. Ilderton*, but that they cannot be distinguished as to the quantity and bounds thereof.

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against
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THE COURT therefore ordered a commission to issue to enquire into, ascertain, set out, and distinguish, by proper metes, descriptions, and boundaries, the specific species and parcels of glebe land belonging to the rectory of *Ilderton*, from and out of the lands and grounds within the said township, belonging to the defendant *Thomas Ilderton*, now in the possession of the defendant *C. P. Dartiquenave*, as tenant to the said *T. Ilderton*, the owner of the said lands and grounds.

EYRE, *Chief Baron.*

HOTHAM, *Baron.*

PERRY, *Baron.*

THOMSON, *Baron.*

A commission accordingly issued, which was returned with a certificate and plan thereto annexed of their proceedings under the same; but by an order made the twelfth day of *February 1789*, the said commission and certificate were quashed, for the reasons in the order mentioned, and a new commission issued directed to the other commissioners, &c.; which commission issued, and was returned with a certificate and plan thereto annexed; but on the nineteenth of *May 1791*, another commission was issued, directed to the commissioners, who returned the said commission, with one other commissioner, named by the defendant, authorizing and empowering them, or any two or more of them, to set out, ascertain, and distinguish, such a quantity of land from the particular species of land called *the Canny Yards, the Wcoberlaw, North Keinb, and South Keinb*, and a butt of land called *the Harelaw*, and various other lands mentioned therein, as with the church-yard and the right of common appurtenant to the glebe land belonging to the said rectory of *Ilderton*, were worth, to be let in the year 1704, the sum of thirteen pounds, clear of all reprises, land tax only excepted; this cause to be further heard on the return of the said commission: but on the eleventh of *July 1792*, upon reading the said decree and certificate; and on full debate; it appearing to the Court that there was an error apparent upon the face of the last certificate, with respect to the value of the land set out by the commissioners; and it being admitted that land of the yearly value of three pounds, sixteen shillings, and elevenpence, ought to be added to the land already set out; it was ordered, &c. by consent of the parties, that it be referred to *Mr. T. James* to set out the lands adjoining to those already set out, by virtue of the said commission, of the yearly value of three pounds, sixteen shillings, and elevenpence, which the defendant *C. Ilderton* undertook to deliver up to the plaintiff; and, with such variation, THE COURT confirmed the certificate of the commissioners in the last commission.

THE

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against
ILDERTON.

THE COURT further ordered the deputy remembrancer to take an account of the value of *the glebe land*, according to the computation thereof by the last certificate, and as corrected by this decree, being thirty-one pounds, one shilling, and two-pence, from *Whitsuntide* 1780 to *Whitsuntide* preceding the death of *T. Ilderton*; also a like account of the value of such glebe land, to be computed as aforesaid, to be answered by the defendants *Mary* and *C. Ilderton*; they submitting to pay the plaintiff the same.

THE COURT further ordered the plaintiff to pay to the defendant *the Duke of Northumberland* his costs of this suit, according to the course of the court; and that the plaintiff have the same over again, with his own costs to be taxed, and to be paid by the defendant *Mary Ilderton*; but as to the other parties in this cause, the Court did not think fit to give any costs.

The deputy made his report, dated the twenty-ninth of *June* 1793; and on the third of *July* following, upon hearing counsel for the plaintiff, and reading the decree and report, the report was confirmed, and the defendants ordered to pay the several sums reported due, with the costs already taxed; and the defendant *Mary Ilderton* to pay to the plaintiff his subsequent costs.

MACDONALD, *Chief Baron*.
HOTHAM, *Baron*.
PERRYN, *Baron*.
THOMSON, *Baron*.

MICH. TERM,
29. GR. 3.

GILL against ZOUCHE.

Yorkshire, 20th November 1788.

The impropriator of the tithes of the township of *Sandall Magna*, in the parish of *Sandall Magna*, in *Yorkshire*, claims all the great and small tithes, except of wool and lambs, particularly the tithes of weld, clover seed, line

THE impropriators of that part of the rectory of *Sandall Magna* which lies within the township of *Sandall Magna* claim the great and small tithes (except the tithes of wool and lambs), particularly the tithes of weld or wold, clover, clover seed, line, potatoes, turnips, hay, herbage, and agistment of dry, barren, and unprofitable cattle, yearly arising in the said township; and stated, that in the year 1357 the vicarage of *Sandall Magna* was endowed with one messuage and one croft, with the appurtenances, and with twenty marks in money, payable yearly out of the impropriate rectory of *Sandall Magna*; and with no tithes or other oblations whatsoever (a).

seed, turnips, potatoes, hay, and agistments, arising in the said township.

(a) See Wood v. Beaumont, vol. 1. page 216.

The defendant *Zouch* admitted, that the plaintiffs were the impropriators, as in the bill alledged; but denied, that in the year 1357, or at any other time, the said vicarage had been endowed with one messuage and one croft, with the appurtenances, and twenty marks in money, payable yearly out of the impropriate rectory, and with no other tithes or dues. He admitted, that the impropriators were entitled to the tithes of corn and grain in the township; and said, that he had from the year 1754 been vicar of the parish, and also owner and occupier of freehold lands and grounds therein; that he had had thereon hay and clover grass; but denied that the plaintiffs were entitled to the tithes of the said hay and clover, or any satisfaction for the same, for that the lands were part of *Grice's Farm*; and that the owner or occupier thereof had immemorially paid, at *Easter* yearly, to the vicar of the parish, the sum of fourpence, in lieu of tithe hay arising therefrom: and he set forth the other lands of which he was owner and occupier, with the titheable matters he had had thereon; and said that, as vicar of the parish, he was entitled to all the oblations, obventions, offerings, and mortuaries payable throughout the said parish, and also to all such small tithes in kind as had yearly arisen in the said township, and for which no *modus*, or other composition in lieu thereof, was then paid to him, save that he believed that the plaintiffs had received the tithes of pigs, geese, eggs, and a customary payment for carts, called a *ben*, in the said township, and save that the owner of the great tithes of *Crigglestone* (a), a village in the said parish, had, from time to time, received the tithes of wool and lambs in the said township of *Sandall Magna*. He further said, that from time immemorial there had been kept in the said parish, by the vicar thereof, THE EASTER BOOK, wherein were entered the names of all the householders in the parish; and under the several heads or titles following, viz. "*Rities Fen. Oblat. Vacee, Nove, Vance, Gall, Apes, Pull, Lin*;" all such *moduses* and *Easter* offerings as were due and payable to the vicar from each respective householder; and he insisted, that the several sums mentioned in the said books to have been due from, and payable by every respective householder in the said parish, had, from time immemorial, been received and taken by him and his predecessors, at *Easter* yearly, in such proportions and manner as in the said books were set forth, in discharge of all and every the titheable matters and things comprised under the several heads and titles; and he denied, that any thing was due and owing from him to the plaintiffs in respect of any of the titheable matters and things mentioned in the bill.

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against
ZOUCH.

The defendant, as vicar, admits, that the plaintiffs are entitled to the tithes of corn and grain in the township; and that they had received the tithes of pigs, geese, eggs, and carts; but insists, that he is entitled to the tithe of hay;

that there is a *modus* of 4d. a year, in lieu of the tithe hay of *Grice's Farm*; that all the small tithes of the parish belong to him,

except the tithes of wool and lambs in the village of *Crigglestone*; and that his right thereto is evidenced by the *Easter Book*.

The defendant *Crowther* and others said, that the vicar claimed the tithes of weld, turnips when pulled to sell, potatoes, and line;

turnips, potatoes, line, clover, hay, and agistment, belong

The occupiers insist, that the tithes of weld, to the vicar.

(a) See Taylor v. Beaumont, vol. 3. page 401.

that

GILL
against
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that they had paid the same to him ; that the plaintiffs had yearly received the tithes of corn, rape, geese, pigs, and two or three eggs from each householder, and threepence for a plough, for each person keeping a plough in the said township ; that they had paid the same accordingly ; that part of their lands were part of *Grice's Farm* ; and they set up the *modus* aforesaid in lieu of tithe hay ; and said, that the said *modus* was payable to the vicar ; that the plaintiffs were not, to their knowledge, entitled to agistment tithe of oxen, beasts, horses, colts, and other barren and unprofitable cattle, sheep, and lambs depastured on their grounds in the said township ; that they had not paid to the plaintiffs the tithes of any weld, clover seed, line, potatoes, turnips, hay, or agistment of barren and unprofitable cattle, sheep, or lambs, depastured thereon, for that they were not entitled to the said tithes ; for that the tithes of weld, clover seed, line, potatoes, and turnips, belonged, and had been paid and were due to the vicar.

The cause
heard.

The plaintiffs replied ; the defendants rejoined ; and witnesses were examined on both sides : and upon hearing counsel, and reading the following evidence for the plaintiffs, *viz.* an indenture quadrupartite, dated the twentieth of *June*, in the third year of *William and Mary*, 1691, made between *William Hardcastle* and others ; an exemplification of a fine of lands in *Sandall Magna*, *Millthorpe*, *Larton*, otherwise *Laverton*, and *Missex*, in the county of *York*, and of the rectory of *Sandall Magna*, with the appurtenances, and of all and all manner of tithes in *Sandall Magna*, of *Trinity Term*, in the third year of *William and Mary*, between *A. Arthington* and others and *William Hardcastle* and others ; an exemplification of a recovery of lands and tithes in *Larton*, *Missex*, *Sandall Magna*, *Millthorpe*, and *Coverham*, and of the rectory of *Sandall Magna*, with the appurtenances, and of all and all manner of tithes, except wool and lambs, in *Sandall Magna*, in the county of *York*, of *Michaelmas Term*, in the sixth year of *George the First* 1719 ; a lease and release, dated the twenty-fourth and twenty-fifth of *April* 1767, made between *Richard West* and others, being a conveyance of land, tithes, and premises in *Sandall Magna* ; another lease and release, dated the twenty-second and twenty-third of *March* 1776, made between *Henry Woolhouse* and others, being a conveyance to the use of *Thomas Gill* and wife of all the said *Henry Woolhouse*, &c. tithes, and other premises in *Sandall Magna* ; and reading, by consent, the office copies of the appropriation of the vicarage of *Sandall Magna*, dated the thirteenth of *March* 1355 ; also of the endowment of the church of *Sandall Magna* and *Birton*, dated the twenty-seventh of *March* 1357 ; an order, dated the sixth of *November* instant, to read a decree of this court, dated the twentieth day of *February* 1745, made in a cause *Lambert v. Smith* ;

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against
ZOUCH.

Smith(a); a decree in a cause, dated the twenty-fourth of *April* 1749, *Lambert v. Zouch (b)*; a book, purporting to contain an account of the public charities belonging to the township of *Sandall Magna*, and of other things relating to the poor and the charity-school, at page number six in the said book, was read, “An account of what monies *Mr. Zouch, Mr. Jackson, and Mr. Wood*, trustees for the charity-school, received for tithe hay, herbage, or by virtue of a letter of attorney from *Thomas Hardcastle, Esquire*, impropiator; also how the moieties of the said monies had been disbursed;” a receipt, dated the nineteenth of *April* 1751, from *Samuel Wood* to *John Wright*, for five shillings and sixpence, in full for tithe hay, with thirteen shillings and fourpence for costs of suit; the answer of the defendants; and reading, by consent, the following evidence for the defendants, viz. a terrier out of a parchment book, dated in 1684, intitled, “A true and perfect Terrier or Survey of the Houses, Out-Houses, Gardens, Orchards, Meadows, and all other the Glebe belonging to the Vicarage of *Sandall Magna*, together with the Butts and Bounds thereof; likewise an Inventory of all the Portions of Tithes, Rents, Pensions, and other Emoluments, as belonging to the said Church;” a book, intitled, “*Mr. Zouch's Easter Book*,” beginning in 1717, relating to payments by *J. Grice* and others; another book, intitled, “*The Easter Book of the Church of Sandall Magna*,” begun the thirty-first of *March* 1753, intitled, “Free Rents anciently and customarily paid to the Vicar at *Easter*;” a receipt book for his *moduses*, given by *Charles Zouch* to *Robert Webster*, of fourpence, being the annual payment due to the vicar of *Sandall Magna* at *Easter*, in lieu of tithe hay, herbage, and agistment of his farm in the township of *Sandall Magna*; a receipt by *Charles Zouch*, vicar of *Sandall Magna*, dated the thirtieth of *March* 1741, of twopence, being the annual payment due from *Mr. J. Webster*, in lieu of tithe hay, herbage, and agistment of his farm in *Sandall Magna*; several other receipts for the like *moduses*; and several of the depositions taken in the cause; and the defendant *Ewbank's* answer;

THE COURT ordered the bill, as to so much as sought an account of the tithes of line, turnips, and potatoes, to be dismissed as against all the defendants, the plaintiff declining an issue to try his right as to the said species of tithes.

The impropiator refuses to try his right to the tithes of line, turnips, and potatoes.

THE COURT further ordered the bill, as to so much as sought an account of the tithes of hay, clover, and agistment, arising from the lands mentioned in the answer to be in the occupation of the defendant *Henry Zouch* (except the tithes arising from the close called *Tithe Laithe Close*, and from two parcels of land,

The bill dismissed as to tithe hay, except on *Tuke Laithe Close* and two other closes.

(a) Vol. 2 page 436.

(b) Vol. 2. page 440.

GRIFF
against
ZOUCH.

The bill dismissed as to hay, clover, and agistment, except in *Harrop's Croft*, *Flower's Croft*, and *Narrow Ridgings*.

The bill dismissed as to weld, where none was grown.

The bill dismissed as to clover seed, where none was grown.

The bill dismissed as to weld, where none was grown ;

The tithes of all the other matters claimed by the bill decreed ;

but without costs on either side.

The report made and confirmed, but without costs.

containing one acre or thereabouts, mentioned in his answer to be in his occupation) to be also dismissed.

THE COURT further ordered the bill, as to so much as sought an account of the tithes of hay, clover, and agistment, arising from the lands mentioned in the answer to be in the occupation of the defendant *Thomas Ewbank* (except the tithes arising from *Harrop's Croft*, *Flower's Croft*, and *Narrow Ridgings*) to be also dismissed.

THE COURT further ordered the bill, as to so much as sought an account of the tithes of clover seed and weld arising upon the lands in the occupation of the defendant *H. Zouch* to be dismissed, no such tithes having been proved to have arisen therefrom.

THE COURT further ordered the bill, as to so much as sought an account of the tithes of clover seed arising upon the lands in the occupation of the defendant *F. Crowther* to be dismissed, no such titheable matter having been proved to have arisen therefrom.

THE COURT further ordered the bill, as to so much as sought an account of the tithe of weld arising from the lands in the occupation of the defendant *H. Burgoine*, to be dismissed, no such tithe having been proved to have arisen therefrom.

THE COURT, with respect to all the other titheable matters claimed by the bill, which were not ordered to stand dismissed, ordered all the defendants to account with and satisfy the plaintiffs for the tithes thereof which had arisen upon the lands and grounds stated by the defendants in their answers to have been in their several and respective occupations in the township of *Sandall Magna* during the times demanded by the bill: the deputy remembrancer to take the account, &c. ; but no costs to be allowed on either side.

The deputy made his report, dated the twelfth of *July* 1791 ; and on the twenty-seventh of *July* it was confirmed, but without costs.

MICH TERM,
29. GEO. 3.

NAGLE against DAVIES.

Cardiganshire, 5th December 1788.

The owner of the tithes of the parish of *Llanvibangel*, in *Cardiganshire*, is entitled to the tithes of hay and agistment on the two farms called *Willirog* and *Taisber*.

THE impropriator of the tithes of the parish of *Llanvibangel* *Gener Glyn*, in the county of *Cardigan*, claimed particularly the tithes of hay and agistment arising on *Willirog Issa Farm* and *Taisber Farm*.

The

The defendant admitted, that he occupied *Willirog Iffn Farm*, part lying within the said parish; that in 1781 he purchased *Ynisber Farm*, in the chapelry of *Eylwys Laith*; and he set forth the quantity of hay he had mown, and the dry and unprofitable cattle he had fed thereon; but he said, that he had never paid the tithe of hay and agistment in respect of any part of the said land, nor any satisfaction for the same; and insisted, that they were exempted from the payment of tithes.

NAGLE
against
DAVIES.

The plaintiffs replied; the defendant rejoined; and witnesses were examined on both sides; and upon hearing counsel on both sides; and reading the probate of the will of *J. Chichester*, dated the third of *December* 1782; several depositions; letters patent, dated the fifteenth of *February* 1675, between the *Earl of Castlemaine* and others; several deeds and assignments; and the defendant submitting to account;

THE COURT ordered, by consent, the deputy remembrancer to take an account of the tithes demanded by the bill; and each party to abide by his own costs.

TROTT against HAGGER.

MICH. TERM,
29. GEO. 3.

Hertfordshire, 17th December 1788.

THE lessee of the impropriator of *Hemel Hempstead*, in the county of *Hertford*, claimed the great and small tithes arising in the parish.

The impropriator of *Hemel Hempstead*, in *Hertfordshire*, claims the great and small tithes of the parish.

The defendant admitted, that he occupied lands at *Pickett's End*, in the said rectory; that he had had corn, grain, hay, milch cows, calves, pigs, eggs, poultry, and other such titheable matters thereon, which he had taken, and disposed of to his own use, without setting out any part thereof, or making the plaintiff any satisfaction for the same; that he was one of the people called *quakers*; that it was not customary for persons of that persuasion to set out or pay tithes; but that it was usual and customary for them to leave the persons claiming and having title to tithes to separate and take away the same as they should think fit, but which the plaintiff had omitted to do. He further stated, that he had not kept, fed, and depastured any unprofitable cattle; and insisted, that the lands he occupied were exempted from the payment of tithes.

The defendant says, that he is a *quaker*; that it is usual for those who are entitled to tithes to take them from persons of his persuasion; but that the plaintiff had neglected so to do; and that his lands at *Pickett's End* are tithe free.

The plaintiff replied; the defendant rejoined; but no witnesses were examined on either side; and upon hearing counsel; and reading the lease;

The cause heard.

THE COURT ordered the deputy to take an account of all and every the titheable matters and things demanded by the bill, with costs.

The tithes decreed with costs.

MICH. TERM,
27. GEO. 3.

EVANS *against* CLARKE.

Essex, 18th December 1788.

The rector of *West Tilbury*, in *Essex*, claims the tithes of the parish in kind.

See *Silverlock v. Isles*, vol. 1. page 176.

The defendants say, that the plaintiff had let the tithes; and that they were bound to pay them to his lessee, notwithstanding he had given them notice to the contrary.

THE rector of *West Tilbury*, in the county of *Essex*, claimed the great and small tithes of the parish, particularly the tithes of hay, corn, grain, wood, turnips, turnip seed, coltsfoot, coltsfoot seed, sheep, wool, lambs, agistment of bullocks, runts, live stock, barren cattle, horses, mares, and geldings, oziers grown, cut down, or consumed in the parish, milk, calves, poultry, eggs, pigs, garden stuff, and fruit, in kind.

The defendants admitted, that the plaintiff was entitled to the tithes of hay, corn, grain, wood, turnips, and turnip seed, &c. as specified in the bill; but insisted, that he had come to an agreement with some person for the same, by which they considered themselves as bound. They also admitted, that they occupied lands in the parish; and they set forth the several titheable matters they had had thereon; but said, that they had not set out the same, apprehending that they were obliged to pay them to the person whom the plaintiff had agreed with for the same. They admitted, that the plaintiff had given them notice to the following purport: "I do hereby give you notice, that you do not, at your peril, account for or pay for any tithes whatever arising or growing upon your farm and lands within the parish of *West Tilbury*, in the county of *Essex*, from last *Michaelmas*, to any other person than to me, as rector of the said parish. Dated the nineteenth day of *March* 1787. D. EVANS."

The cause heard.

The plaintiff replied; the defendants rejoined; and witnesses were examined on the part of the defendants only; and upon hearing counsel; and reading an office copy of a judgment roll of his majesty's court of common pleas of *Hilary Term*, in the twenty-seventh year of his present majesty's reign, in the cause of *Doe v. Roe* in ejectment; the writ of possession; and the sheriff's return thereon in *Easter* following;

The Court ordered an account to be taken of the tithes demanded by the bill.

THE COURT ordered the deputy to take an account of all the titheable matters demanded by the bill, with costs.

Exceptions taken to the report.

The deputy remembrancer made his report, dated the sixteenth of *February* 1790; and on the twenty fourth of *February* following, upon hearing counsel, and reading the decree, report, and exceptions; and on full debate of the matter;

The Court overrule some exceptions, and all others.

The deputy ordered to review

THE COURT ordered the first exception to be over-ruled, and the second exception to be allowed; and that, upon the defendants, or one of them, paying the said plaintiff his costs of the reference in taking the account, and the costs of the hearing his report, on the defendant's paying costs.

upon

upon the report, the deputy should review his report, and take fresh examinations, as he shall think fit.

THE COURT further ordered the deputy to tax the plaintiff his costs of the former reference, and the hearing of the report; the said costs, when taxed, to be paid within a week after taxation; but in default, the report to be ratified and confirmed, with costs (except as to the second exception): the deputy to tax the subsequent costs.

On the third of *February* 1792, upon opening the decrees, reports, and exceptions; and hearing counsel on both sides; and reading several depositions;

THE COURT ordered several of the exceptions to be over-ruled, and several allowed; and the report to be varied in some respects; and thereupon to be ratified and confirmed; and the defendants to pay to the plaintiff the several sums declared to be due from them, after such variations made, with subsequent costs.

EVANS
against
CLARKE.
The former costs of the reference to be taxed and paid, or the report to be confirmed.

The report confirmed, with variations, and subsequent costs.

SMITH against SPANSWICK.

Berkshire, 27th February 1789.

HILARY TERM
29. GEO. 3.

THE vicar of *Chipping Lambourne*, in the county of *Berks*, claimed the tithes of cows, calves, colts, and milk, arising in the parish.

The defendant said, that the parish consisted of five several precincts, viz. *Church Lambourne*, *Up Lambourne*, *Beckhampton*, *Eastbury*, and *the Woodlands*; that the lands he occupied were situate in the precincts of *Eastbury* and *the Woodlands*; and he set up a *modus* of fourpence a cow depastured in the precinct of *Eastbury*, payable at *Easter*, in lieu of all tithes for the agistment, and fourpence in lieu of the tithes of calves and milk yielded from such cow.

THE COURT, by consent, ordered the arrears of the *moduses* to be paid, and the bill to be dismissed without costs.

The vicar of *Chipping Lambourne*, in *Berkshire*, is only entitled to 4d. a year, at *Easter*, in lieu of the agistment tithes of every cow fed in the precincts of *Eastbury*, and to 4d. a year in lieu of the tithes of the milk and calf of such cow.

ELLIS against SAUL.

Lincolnshire, 3d February 1789.

HILARY TERM
29. GEO. 3.

THIS cause standing in the paper of causes, the Court heard counsel on both sides; and on reading the following evidence for the plaintiff, by consent, viz. an office copy of an endowment, dated the fourth day of the kalends of *November* 1363, intituled, "*Ordinatio Vicarie Eccle. de Sibefaye decanat. de Bolyngb.*" extracted from an ancient book of institutions, &c. in the time of *Bishop Beekingham*, who began to preside over

The Court will suppress a leading interrogatory, and give the party leave to file a new one, and examine witnesses thereon.

ELLIS
against
SAUL.

The impropria-
tor a necessary
party to a bill by
the vicar.

the fee of *Lincoln* in the year of Our Lord 1363, which book remains in the registry of the *Lord Bishop of Lincoln*; and reading the following evidence for the defendants, viz. several depositions taken in the cause, it appeared, that the third interrogatory on the part of the defendants was a *leading interrogatory*; and it was thereupon ordered, &c. that the said interrogatory, and all the depositions taken thereupon, be suppressed, with costs to be taxed on the part of the plaintiff; and that the cause be adjourned over without payment of costs on either side (except as to the costs before directed); with liberty, in the mean time, to the defendants to exhibit a new interrogatory in the room of that which was suppressed, and to issue a commission to examine their witnesses on the new interrogatory; that the plaintiff might join in the same, and cross-examine the defendant's witnesses, if he should think fit; and in the mean time the plaintiff be at liberty to amend his bill, by making the impropriate rector of the vicarage of *Sibsey* a party to the suit.

The amended bill came before the Court on the twenty-fourth of *February* 1790.

The vicar of
Sibsey, in *Lin-*
colnshire, claims
the agistment
tithes of barren
and unprofitable
cattle.

S. C. Anstruther
Rep. 332 note.

The plaintiff, as vicar of the parish of *Sibsey*, in the county of *Lincoln*, stated, that the parish-church of *Sibsey* was a rectory impropriate; that he had been duly presented to the vicarage thereof; that he was thereby entitled to receive all, or the greater part of the small tithes yearly arising therein, particularly the tithes of agistment of all barren and unprofitable cattle, and cattle not yielding tithe in kind; that the defendant *Saul* and others, farmers and resiants in the parish, had yearly agisted on certain lands there in the said parish in their respective occupations, and also on certain commons or fens within, adjoining to, or near the said parish, a considerable number of horses, cows, oxen, sheep, lambs, and other cattle belonging to them respectively, or taken the same in to depasture for hire; that during the time of such agistment they were barren, and did not yield any tithe in kind to the plaintiff; that he had frequently applied to them to pay him his tithe thereof, but that they had refused so to do, or to make him any compensation in lieu thereof; that if any *modus* or composition existed, it was payable to the impropriator in lieu of the tithe of hay or some other tithe belonging to the rectory, for that no *modus* or composition had at any time been paid to the vicar in lieu of agistment tithe; that by an endowment, dated the twentieth day of *October* 1363, *Simon*, then *Archbishop of Canterbury*, endowed the said vicarage, and thereby decreed, declared, and ordained, that the vicar of the parish should have, amongst other things, the tithes of milk, meads, and all small tithes, except the tithes of geese, hogs, lambs, and wool, which were reserved to the priory of *Spalding*, to which the rectory of *Sibsey* had been appropriated; that the vicar was, by virtue of the said endowment,

ELIZ
against
SAUL.

ment, entitled to the tithes of such agistment ; that neither the present nor any former impropriator of the parish had ever received the agistment tithe or any *modus* or other compensation in lieu thereof. The bill therefore prayed an account of the tithes of the agistment of all the horses, cows, oxen, sheep, lambs, and other cattle, which had been depastured by the defendants respectively on any of their lands in the parish, or upon any common or fen within, adjoining, or near to the same, at any time since he had been vicar, which were barren and unprofitable, and had not yielded him any tithe in kind during such agistment ; and payment of what shall appear due thereon.

The defendant *J. Saul* and others, the occupiers, admitted, that the parish of *Sibsey* was a rectory impropriate ; that the plaintiff might be vicar thereof ; that the vicars thereof were, by ancient endowment, entitled to receive the small tithes which arose therein, or some payment in lieu thereof, except those to which the rector was entitled ; but he denied that the plaintiff was entitled to the tithes of the agistment of barren and unprofitable cattle in kind, for that there had been immemorially payable to the rector yearly, on the twenty-second day of *November*, commonly called *Old Martinmas Day*, three ancient *moduses*—FIRST, A *modus* of one penny an acre, in lieu of the tithes of all grafs growing on the lands called *the Moors*, lying on the east side of *Wardike Drain*, whether such grafs were mown for hay, or eaten by the mouths of barren and unprofitable cattle. SECONDLY, A *modus* of twopence an acre, in lieu of all the tithes of the like grafs, whether mown for hay, or eaten by the mouths of barren and unprofitable cattle, within a certain other part of the parish consisting of a plot called *the Moors*, lying on the west side of the *Wardike Drain* ; another plot, called *the Monk's Fugs* ; another plot, called *the Flays* ; another plot, called *the Mallows* ; and another plot, called *the Dales*. THIRDLY, A *modus* of threepence an acre, in lieu of all the tithes of the like grafs, whether mown for hay or eaten by the mouths of barren and unprofitable cattle, growing upon all the grafs lands in the parish, or titheable places thereof, not comprised within either of the above-named districts (except the village called *the Frith Bank* (a), the tithes whereof were not due or payable either to the rector or vicar, but had been constantly paid to *A. B.* or his lessees as far back as he had knowledge respecting the same, or as it could be traced ; that the said three districts comprised all the lands in the parish, except the village of *Frith Bank* and the arable lands. The defendant further said, that there had not been any barren or unprofitable sheep fed in the parish during the time mentioned in the bill ; but that, on the con-

The defendant denies, that the vicar is entitled to agistment tithes ; and sets up three *moduses* payable to the rector, in lieu of the tithe of grafs, whether mowed or eaten. 1st, of 1d. an acre for *the Moors* on the east side of *Wardike Drain* ;

2dly, of 2d. an acre for *the Moors* on the west side, *the Monk's Fugs*, *the Flays*, *the Mallows*, and *the Dales* ;

3dly, of 3d. an acre for all the other lands in the parish, except *the Frith Bank*, the tithe of which was lay property.

He also sets up *moduses* to the rector for wool and lambs.

(a) See *Wiles v. Smith*, vol. 1, page 9.

ELLIS
against
SAUL.

1st, tithe in kind
for all sheep
brought in be-
fore *Candlemas* ;

2d. a head for
those brought in
after *Candlemas* ;

3d. a head for
all brought in
before *Old Can-
dlemas*.

trary, all the sheep that had been fed and depastured therein had, in fact, yielded, according to certain immemorial customs, tithes in kind of wool and lambs, or some *modus* in lieu thereof, to the rector, in manner following, *viz.* that the tithe in kind had been paid of the wool of sheep brought into the parish before *Candlemas Day*, and clipped therein ; that one penny a head had been paid for every sheep brought into the parish after *Candlemas Day*, commonly called *new sheep*, and clipped therein, in lieu of the tithe of the wool of such sheep ; that threepence a-head had been paid for all sheep that were in the parish before the thirteenth of *February*, commonly called *Old Candlemas Day*, whether bred or shorn therein in the preceding year, and brought into the said parish a short time before the said thirteenth day of *February* in every year, and carried out of the parish before the succeeding shearing day with the wool upon their backs, as an average rate or payment in lieu of the tithe of wool carried out upon the backs of all sheep removed out of the said parish after any one shearing day, and before the shearing day in the succeeding year. He therefore insisted, that the plaintiff was not entitled to receive the tithes of agistment for sheep or for barren or unprofitable cattle ; that he could not, in law, be entitled to the same to the extent claimed by his bill ; for that the tithes of agistment of barren and unprofitable cattle fed and depastured upon ground which had been mowed for hay, and which had paid the tithes of such hay, or a *modus* in lieu thereof, within the same year, were not due of common right to the vicar of the parish ; and that the claim insisted upon by the bill to such tithes, or to a satisfaction in lieu thereof, was ill founded and unreasonable. He admitted, that he had kept, fed, and depastured on his lands in the said parish some sheep, and some barren and unprofitable cattle, and had not made the plaintiff any satisfaction for the tithe agistment of such sheep and cattle ; and he set forth a full account thereof.

The rector
claims the said
moduses ; admits
that he has re-
ceived them ;
and submits to
the Court, whe-
ther the vicar is
entitled to agist-
ment tithes.

The defendant *Gape*, the inappropriate rector, admitted, that the plaintiff was vicar ; that he was entitled to the small tithes, excepting such as were payable to him the rector ; and whether he was entitled to the tithe of agistment of barren and unprofitable cattle he submitted to the court ; and said, that the three several *moduses* before stated had been immemorially paid to, and accepted by the rector for the time being. He also said, that he knew not whether the plaintiff was or was not entitled to the tithes of agistment for any sheep fed in the parish ; and that according to an ancient and immemorial custom, tithe in kind of wool and lambs, or a certain *modus* in lieu thereof, was payable to the rector, as before stated,

The cause
heard.

To which answer of the defendants the occupiers, the plaintiff replied ; the defendants rejoined ; and witnesses were examined on both sides ; and upon hearing counsel for

for all parties several days ; and reading the following evidence for the plaintiff, by consent of the defendants solicitor for the occupiers, viz. an office copy of an entry, dated the fourth kalend of November, anno Domini 1363, intituled, "*Ordinatio Vicarie Eccle, de Sibefaye decanat. de Bolyngb.*" extracted from an ancient book of institutions, &c. in the time of *Bishop Beckingham*, who began to preside over the see of *Lincoln* in the year 1363, which book is remaining in the registry of the *Bishop of Lincoln*, at *Lincoln* ; an office copy of a terrier extracted from the registry of the *Bishop of Lincoln*, intituled, "*Lindsey, A true and perfect Terrier of all the Glebe Lands and Dues belonging to the Vicarage of Sibsey, in the Parts and County afore said, drawn according to the Directions sent by the Right Reverend Father in God William, Lord Bishop of Lincoln, October the eighth 1707 ;*" and upon the plaintiff's admitting the fact of payment to the rector of so much an acre, as by the several answers of the defendants is alledged, for every acre of grass land, whether mown or fed by barren and unprofitable cattle, as far back as living witnesses could go ; and upon reading the following evidence for the defendants the occupiers, viz. an account of the tithes, &c. from *John Saul* to *Richard Coleman* for the year 1766 ; an account of tithes from *J. Saul* to *R. Coleman* for 1765 ; a tithe book, indorsed, "*Tithe Book for the Year 1735 ;*" and reading the depositions of several witnesses for the said defendants ; as also the depositions upon their cross examinations for the plaintiffs ; the cause was adjourned over to this day for the judgment of the Court.

ELIZ
against
SAUL.

THE COURT ordered, adjudged, and decreed, the bill to be dismissed with costs.

The bill dismissed with costs.

CROFT against AYER.

HILARY TERM
30. GEO. 3.

Yorkshire, 1st February 1790.

THE rector of *Rowley*, in the county of *York*, claimed the great and small tithes of the parish, and particularly of the township of *Risby*, in kind ; and stated the case of *Walter v. Bradshaw* (a).

Quere, Whether the rector of *Rowley*, in *Yorkshire*, is entitled to the great and

small tithes of the township of *Risby* in kind, or only to certain moduses in lieu of the tithes arising on the *Demesne Lands* and the *Ancient Inclosures* of the said township.

(a) The case of *Walter v. Bradshaw* came before the court of exchequer on the twenty-sixth of June 1703, Trinity Term, in the second year of *Queen Anne*. The bill was filed by the rector of *Rowley* to discover the great and small tithes which had arisen on the farm, the park, the orchards, and the dove-cote, in the occupation of the defendant in the township of *Risby*, in the said parish, from *Michaelmas* 1693. An order was made that the defendant should appear *gratis* at the hearing of the cause, but no coun-

sel attended on his behalf ; and on the twenty-fifth of October 1703, the deputy was directed to take an account of the tithes demanded by the bill, unless cause were shewn to the contrary. The deputy made his report, dated the first of May 1704 ; and on the eleventh of the same month, no cause having been shewn, the report was confirmed, and the defendant ordered to pay ninety-seven pounds, nineteen shillings, for his tithes in the township of *Risby*.

The

CROFT
against
AYER.

The defendants admitted, that the plaintiff was rector of the parish, and entitled to all the tithes thereof, except with respect to the lands and tenements in the township of *Risby*; and stated, that the said township contained about nine hundred and thirty acres of inclosed land; that certain parts thereof were demesne lands, called *the Demesne Lands* of the manor of *Risby*, containing one hundred and fifty-six acres; that other parts thereof were *Ancient Inclosures*, containing four hundred and thirty-two acres; that the remainder thereof contained three hundred and forty-two acres; and they insisted on a custom for the owners or occupiers of lands in the township to pay, at *Michaelmas* yearly, to the rector, in lieu of all manner of tithes, as well great as small, offerings, payments, dues, and duties whatsoever, that is to say, for and in lieu of *the Demesne Lands* in the lordship of *Risby*, the annual sum of three pounds; for *the Ancient Inclosures* of *Risby*, the annual sum of one pound, ten shillings; and for all the lands in *Risby* accustomed to pay tithes in kind, the annual sum of twelve pounds; amounting together to the annual payment of sixteen pounds, ten shillings, after allowing land tax, amounting sometimes to the sum of one pound, and sometimes to one pound, four shillings.

The defendant *Ayer* said, that she occupied an ancient farm, called *Town End Farm*, consisting of a messuage and two hundred and seventy-nine acres of land, in the township of *Risby*, being part of *the Demesne Lands*, *the Ancient Inclosures*, and *the other Lands*, as aforesaid; that such payments having of late years been made at one and the same time, and a receipt having been given for each year's payments, it was difficult to distinguish *the Demesne Lands* and *the Ancient Inclosures* from the rest of such lands; but, that seventy acres so occupied by her were *Demesne Lands*, and one hundred and ten acres *Ancient Inclosures*.

The defendant *Bayley* put in the like answer as to his farm called *Bayley's Farm*, consisting of one hundred and five acres; and insisted upon the said *modus*.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and upon hearing counsel on both sides; and reading the following evidence for the defendants viz. several depositions; a receipt book for the *modus* of *Risby*, commencing the fourth of *January* 1715, and ending the twelfth of *April* 1782; the ministers accounts of the priory of *Saint John of Jerusalem*, in *Beverley*, from the augmentation office at *Westminster*: and reading the following evidence on behalf of the plaintiff, viz. several depositions; several terriers, dated in 1685, 1701, 1726, 1743, 1749, 1777, and 1786; the great roll of *Walter Gray*, heretofore *Archbishop of York*, dated about 1200, numbers 61, 123, and 137; the office copy

CROFT
against
AYER.

of the bill, answer, decree, and report, in the cause of *Thomas Walter v. Sir Thomas Bradshaw*, in the year 1703; the poor book for the whole parish of *Rowley*, containing the original assessments to the poor's rates of the estates, lands, and tithes within the township of *Risby* and the rest of the parish of *Rowley*, beginning in *April* 1739, and ending in *April* 1772; a receipt of *Thomas Wakefield* and *Robert Stickney* for small tithes, dated the fourteenth of *September* 1777; the poor book for the whole parish of *Rowley*, containing the original assessments, beginning 1773, and ending 1789; an extract from the registry book for the parish of *Rowley* of the respective burials from the fifteenth of *May* 1704 to the fifth of *December* 1786; and on full debate; and hearing the reply;

THE COURT ordered the deputy remembrancer to take an account of what was due for the several titheable matters demanded by the bill, with costs, but *without prejudice* to any future claim in respect of the *modus*es defectively set forth in the answer.

NOTE, They were laid too generally, and not confined to any particular lands.

PADDEY against FOULDS.

EASTER TERM
30. GEO. 3.*Yorkshire, 3d May 1790.*

THE vicar of *Kellington*, in the county of *York*, claimed all small tithes arising therein, except within a certain district called *Beal*; and stated, that the defendants occupied lands in the parish, and had fed or agisted for sale or slaughter upon turnips sown thereon, or upon natural or artificial grasses, divers unprofitable cattle, *viz.* ewes and wethers, which were either not shorn at all within the parish, or after shearing-time were fattened for sale or slaughter, or otherwise disposed of, or removed out of the parish before the next shearing-time, and lambs not yeaned in the parish, nor shorn there, but fattened there and sold, or otherwise removed out of the parish, without having yielded any tithe whatsoever; the tithes of which they had refused to pay.

The vicar of *Kellington*, in *Yorkshire*, is not entitled to the small tithes of the lands called *the Board Lands*, in the township of *Beal*; and he is only entitled to 1d for each sheep brought in before *Old Candlemas*, and sold out before *Shearing Day*, in lieu of the agistment tithes of such sheep.

The defendants admitted, that the plaintiff was entitled to the small tithes of the parish in kind, except where *modus*es were payable, and except of certain lands in *Beal*, called *Board Lands*; and said, that they held several houses and lands of considerable value, not parcel of the *Board Lands* in the townships of *Rowall*, *Egborough*, and *Kellington*; that the turnips grown thereon in the said years were of the value of twenty shillings an acre; that they had fed wethers, beasts, and unprofitable cattle, ewes and lambs on the said turnips, or on artificial and natural grasses; that the lambs were fattened and sold before or about the twenty-fourth day of *June* in each year; that all the ewes were brought in

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in before they had lambed ; that they were shorn afterwards in the parish ; and that they had paid to the plaintiff the tithe that was due for such ewes and lambs, and for their depasturage for the said years, which he had accepted : and they set up a *modus* for the owners or occupiers of lands in the parish to pay to the vicar yearly one penny for each sheep bought by them before the thirteenth day of *February*, and sold after that time before they were clipped or shorn, in lieu of the tithes of agistment and depasturage of each such sheep in the said parish ; and said, that they were willing to pay the same in lieu of the tithe agistment of the said sheep ; and they insisted, that such turnips as were from time to time eaten by sheep were not titheable in kind, but that the said *modus* was due to, and ought to be accepted by the plaintiff in full satisfaction of all tithe herbage and depasturage of such sheep, whether the same were depastured on turnips or any other pasturage in the said parish. They also said, that no turnips were drawn or taken out of or from the ground whereon they grew for any other purpose than to be eaten by their own cattle or sheep.

The plaintiff replied ; the defendants rejoined ; and witnesses were examined on both sides ; and the cause came on several times to be heard ; and on reading a decree of this court, dated the fifth day of *June* 1777, made in a cause wherein the present plaintiff was plaintiff, and *Richard Dickon* and others defendants ;

THE COURT ordered a trial at law upon the following issue, TO WIT, “ Whether there is now, and from time immemorial
 “ has been, an ancient and laudable custom within the parish of
 “ *Kellington*, in the county of *York*, that the owners or occupiers
 “ of lands and grounds in the said parish, except certain lands in
 “ *Beal*, called *Board Lands*, have paid, and ought to pay, to the
 “ vicar of the said parish for the time being, or his farmer,
 “ yearly, the *modus* or ancient payment of one penny for each
 “ sheep bought by them before the thirteenth day of *February*
 “ yearly, and sold after that time before they are clipped or
 “ shorn, as a *modus* or ancient payment in lieu and satisfaction of
 “ the tithe of the herbage, agistment, or depasturage of each of
 “ such sheep in the said parish.”

The defendants in equity to be plaintiffs at law ; the action to be tried by a special jury ; and costs and further directions to be reserved.

The issue was tried, and a verdict found for the defendants ; and on the fifteenth of *December* 1790, on reading the decree and the *postea* ;

THE COURT ordered the bill to be dismissed, with costs both at law and in equity.

CHAPMAN

CHAPMAN *against* LANSDOWN.TRIN. TERM,
30. GEO. 3.*Somersetshire, 7th July 1799.*

THE vicar of *Banwell*, in the county of *Somerset*, claimed the tithes of milk yearly produced by the defendant's cows kept from the times their calves were weaned and the cows came to the pail.

The vicar of *Banwell*, in *Somersetshire*, claims the tithes of milk by every tenth evening and morning's meal.

The defendant admitted, that the plaintiff was entitled to tithe milk during the time the cows had been kept and depastured upon *Summer Lease Grounds*, but not to the tithe milk produced by cows during the time they were fed upon after-grass, or upon hay that had before paid tithes : and he set up a *modus*, that every owner or occupier of lands within the said parish for the time being had always paid, and ought to pay, and the defendant had himself usually paid, yearly, at *Michaelmas*, or as soon after as demanded unto or to the use of the rector, twopence for every acre of ground mowed and made into hay, in lieu of the tithe of such hay ; and he said, that the said *modus* also covered the after-grass produced from such ground, in what manner soever the same was fed or depastured. He also said, that he occupied *Cray's Farm*, with its appurtenances ; that he had kept, fed, and depastured thereon, divers milch cows, which yielded him some milk ; but he denied, that he had taken the whole thereof to his own use, without setting out or rendering the tithes thereof ; but that, on the contrary, he had always set out the tithes of all such tithe milk in the mode he had conceived to be proper, *to wit*, the whole of every tenth mornings and tenth evenings milk, reckoning from the time the defendant's cows were turned from hay or after-grass into *Summer Lease Grounds*, which had always been done after the cows had been milked in the morning ; that his cows were not only fed upon hay which grew within the said parish, or on after-grass, but on grass not being after-grass ; that he never set out the tithe of milk of the said cows during the time they were fed on hay or after-grass, he conceiving that the plaintiff was not entitled to the tithe of milk as last mentioned.

The defendant says, that there is a *modus* of 2d. an acre for all mowed lands, in lieu of tithe hay ; that the said *modus* covers the after grass, in whatsoever manner it is depastured ;

that he had set out the tithe milk, except when the cows were fed on hay or after grass ; for that tithe milk is not payable for cows so fed.

The cause came on to be heard upon the bill and answer ; and upon hearing counsel on both sides ;

The cause heard.

THE COURT ordered the deputy to take an account of what was due for the tithe of milk had by the defendant from his cows fed and depastured in the parish for the time demanded by the bill, with costs.

The tithe milk decreed, as demanded by the bill.

MICH. TERM,
31. GEO. 3.

KEENE *against* PATRICK.

Northamptonshire, 8th November 1790.

The vicar of *Brigstock*, with the chapelry of *Stannion*, in *Northamptonshire* annexed, is not entitled to the tithes of *Brigstock Great Park* or *Brigstock Little Park*, but to an annual payment of 22l. 8s. and an ancient payment of 6l. from the proprietors of the said parks.

THE vicar of *Brigstock*, with the chapel of *Stannion*, otherwise *Stanherne*, in the county of *Northampton*, annexed, claimed the small tithes, *Easter* offerings, and oblations, yearly arising therein; and in particular prayed, that his right to the said tithes arising from the lands in the occupation of the defendants *Patrick* and *Bellamy* might not only be accounted for and paid, but established against the defendant *Pultney*, the impropiator of the parish, who claimed both the great and the small tithes of the same.

The defendants *Patrick* and *Bellamy* admitted, that the plaintiff was vicar of the parish, with the chapelry annexed; but denied that he was entitled to any tithes of the lands called *Brigstock Great Park* and *Brigstock Little Park*, containing about one thousand seven hundred acres of land and divers messuages and hereditaments, and formerly the property of the crown, but now the property of the defendant *William Pultney*; that the chapelry of *Stannion* was a distinct parish; had a distinct rector; and was no part of the parish of *Brigstock*; that they occupied two farms under *Pultney*, part of the *Parks*; that they had fed and agisted thereon some barren and unprofitable cattle, and also some sheep and cows, which had yielded lambs, wool, milk, and calves; that they rented the same tithe free; and that therefore they had paid no tithes to the plaintiff.

The defendant *W. Pultney* admitted, that the plaintiff was vicar; that he might be entitled to small tithes arising within the parish and chapelry of *Stannion*, which was a distinct parish, and no part of the parish of *Brigstock*; but he denied, that he was entitled to the small tithes throughout the whole parish, and insisted that he was not entitled to any tithes of the *Parks*; that the lands called *Brigstock Great Park* and *Brigstock Little Park* were parcel of the manor of *Brigstock*; that the manor was parcel of the *Demesne Lands* belonging to the crown before and in the reign of *William the First*, called THE CONQUEROR; that the rectory of *Brigstock* was appropriated to the abbey of *Cirencester*, in the county of *Gloucester*; that the manor of *Brigstock*, and other lands in *Brigstock*, belonged to such abbey before the dissolution thereof; that the abbots thereof held the same discharged of tithes; that upon the dissolution of the abbey, the manor, rectory, and lands, came to the crown; that the rectory of *Stannion*, otherwise *Stanherne*, was also appropriated to the abbey of *Cirencester*, subject to a right to a portion of tithes in *Stannion*, otherwise *Stanherne*, vested in the abbey of *Pipwell*; that upon the dissolution of such abbies respectively, the last-mentioned rectory and portion of tithes also came to the crown; that

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that *Queen Elizabeth*, by letters patent made in the forty-fifth year of her reign, granted to *Sir Robert Cecil, Knight*, his heirs and assigns, *the Parks*, with all the rights thereunto belonging, in as ample a manner as the same, or any part thereof, had come to her hands, or to the hands of her father *Henry the Eighth*, or her brother *Edward the Sixth*, or her sister *Mary*, by reason of the dissolution or surrender of any of the then late monasteries, or of any act or acts of parliament, subject to a certain yearly rent in the said grant mentioned; that he, the defendant *Pulteney*, was entitled to the said land called *the Parks*; that *James the First*, by letters patent made in the first year of his reign, granted to *Robert Stratford* and his heirs the manor and rectory of *Brigstock*, with all its rights, members, and appurtenances, and the advowson and right of patronage of the vicarage of *Brigstock*, with all tithes, great and small, to the said manor or rectory of *Brigstock* belonging or appertaining, to hold to the said *Robert Stratford*, his heirs and assigns, under a certain yearly rent in the said grant mentioned, and subject to an annual payment of twenty-two pounds, eight shillings, to the vicar of *Brigstock*; and that he claimed to be entitled to the said manor, rectory, and tithes, thereto belonging, from the said *Robert Stratford*. He further said, that since the endowment of the vicarage, there had been paid, at *Michaelmas* yearly, by the proprietor of *the Parks*, to the vicars for the time being, an ancient payment of six pounds, over and besides the annual pension of one pound, one shilling, and eightpence, in lieu of any tithes claimed by the vicar for *the Parks*, in case the vicar was at any time so entitled, but which he, the defendant, did not admit. He further said, that he had paid the said sum of six pounds, in lieu of such tithes to former vicars; and was ready and willing to pay the same to the plaintiff if he would accept it.

The *Bishop of Peterborough* submitted his interest in the premises to the care of the court.

The plaintiff replied to all the answers (except *the Bishop's*); and the defendant rejoined; and witnesses were examined on both sides; and upon hearing counsel several days; and reading the following evidence for the plaintiffs, viz. a roll of institutions from the bishop's registry at *Lincoln*, wherein is contained the endowment of the vicarage of *Brigstock*; several depositions in the cause; two receipts, dated respectively the twenty-fifth of *December* 1736 and the twenty-second of *June* 1737, from *Knightly Steward*, vicar of *Brigstock*, to *Mrs. Jane Smith*; an account of the king's farmer of the manor and rectory of *Brigstock*, in the thirty-second year of the reign of *Henry the Eighth*; extracts of leases of the manor, rectory, and tithes of *Brigstock*, in the county of *Northampton*, dated respectively the tenth of *November* 1562 and the tenth of *May* 1586, from the crown to *Edward Montagu* and others; a lease, dated the twelfth of

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of November 1712, from the Earl of Salisbury and Sir William Bowyer to John Warner; the answer of the defendants Patrick and Bellamy; and the following evidence for the defendants, viz. letters patent, dated the twenty-third day of December, in the forty-fifth year of the reign of Queen Elizabeth, from the said queen to Sir Robert Cecil, Knight, of the Parks in the parish of Brigstock; letters patent from James the First, dated the fourth of January, in the first year of his reign, to Robert Stratford, of the rectory and tithes of Brigstock; the depositions of several witnesses taken in the cause; an account from the plaintiff to the defendant William Pulteney from the year 1784 to 1786, and signed F. Keene and James Hamilton; and upon hearing several long arguments and the reply;

THE COURT ordered the bill to be dismissed, with costs.

HILARY TERM
31. GEO. 3.

ETHERINGTON against HUNT; et c. Contra.

Yorkshire, 27th January 1791.

The occupiers of ancient messuages in the parishes of Thorne, Fisblake, or any other parish lying within the manor of Hatfield, in Yorkshire, pay the tithes arising from Thorne North Common, and other waste lands appurtenant to their said messuages, to the rector or vicar respectively of the parish in which the ancient messuage is situated, and not to the rector or vicar of the parish in which the rights of common lie.

THE impropiator of Thorne, in the county of York, claimed the great and small tithes of the parish, particularly the agistment tithe of sheep not shorn, and of lambs not yeaned therein, of horses, colts, bullocks, oxen, dry cows, and other unprofitable cattle; and stated, that the defendants, ever since he had purchased the rectory on the seventh of May 1783, had occupied lands in the parish, on which, and particularly on North Common, they had, from time to time, fed and depastured sheep, lambs, horses, colts, and other cattle; that they had sent the sheep and lambs out of the parish for sale before they were shorn; that they had thereby made considerable profit; that agistment tithes of the herbage of the said lands and commons so eat by such sheep and lambs not shorn or yeaned in the parish, and other unprofitable cattle, ought to have been paid to him, as impropiator, from the time they were put to feed on the herbage of the said lands and commons until they were sold and removed out of the parish; but that they had refused to pay him such tithes, or make him any satisfaction for the same. The bill therefore prayed an account and payment.

The defendants said, that the manor of Hatfield not only extended over and comprized the whole of the parishes of Fisblake and Thorne, but likewise extended over the parish of Hatfield and other parishes; that, from time whereof the memory of man was not to the contrary before and until the second year of Charles the First, there were in all or most of the parishes lying within the manor, and particularly within the parishes of Fisblake and Thorne, commons or waste lands of large extent, which were part of the manor of Hatfield, particularly Ditchmarsh Common, since called Fair Common, and in the bill called Thorne North Common; that

that by ancient custom, from time immemorial and till the second year of *Charles the First*, all the occupiers of any ancient messuages, cottages, or frontsteads, situate within the manor, without any regard as to the town or parish in which such messuages, &c. were respectively situated, were entitled in right of and as appurtenant to the ancient messuages, &c. so in their respective occupations, at all or any time of the year, to depasture any of their commonable cattle upon any of the commons or waste grounds part of the manor of *Hatfield*, without any regard to the parish or place in which such commons or waste lands lay; that *Charles the First*, being seised in fee of the manor of *Hatfield*, and all the waste grounds and commons thereto belonging, and great part of such commons being then subject to be surrounded and drowned with water, so that little benefit could be made thereof without draining the same, entered into articles of agreement, dated the twenty-fourth of *March*, in the second year of his reign, with *Sir Cornelius Vennuyden, Knight*, for draining, &c. the same, who entered into agreements with his tenants and inhabitants thereof, as in the answer fully set forth. The defendants then admitted, that they had depastured, in their own right, horses, sheep, and lambs, on the said common; that all such sheep had been sheared in the parish of *Fisblake*; that the lambs had been yeaned in that parish; and they insisted, that no tithes were due in respect of the agistment of any of such sheep or lambs, no tithes ever having been paid for the agistment of them. They further said, that they had not occupied any lands whatsoever in the parish of *Thorne*, other than *the Common* particularly allotted and conveyed to the use of all the tenants and inhabitants of the manor of *Hatfield* entitled to *right of common* therein, nor depastured any cattle whatsoever on any other lands in the said parish of *Thorne*: and they set forth the number of sheep and lambs, &c. they had depastured on *the Common* in right of their ancient messuages and cottages within the parish of *Fisblake*. They further said, that the dean and chapter of *Durham* were seised in fee of the impropriate parish of *Fisblake*, and entitled to all tithes, both great and small, arising therein; that *T. Gadby*, their lessee, claimed to be entitled, in right of such rectory of *Fisblake*, to the tithes of the agistment of the sheep and lambs depastured by the defendants on the said common in the parish of *Thorne*, and also to the tithe of agistment for all cattle, belonging to any other occupiers of ancient messuages, cottages, or frontsteads, situate within *Fisblake* and *Sykhouse*, in the parish of *Fisblake*, in the manor of *Hatfield*, fed or depastured on such common. They admitted, that they had not paid any tithe of herbage or agistment to the plaintiff, as owner of the rectory of *Thorne*, for the reasons aforesaid.

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The plaintiff replied; the defendants rejoined; and witnesses were examined on each side.

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The defendants filed a *cross bill* against the plaintiff, and added the dean and chapter of *Durham* and their lessee as defendants thereto, stating, that the manor of *Hatfield* extended over and comprized the whole of the parishes of *Fisblake*, *Hatfield*, and *Thorne*; that *Thorne* was a parish of itself, or a hamlet or township within the parish of *Hatfield*; and so went on as in their answer to the original bill, respecting the agreements and right of common, &c.; and prayed, that the defendants might answer the premises, and interplead amongst themselves concerning their respective rights and claims to the tithes due from the plaintiffs respectively; that the rights thereto might be settled and ascertained; that an issue or issues might, if necessary, be had at law for that purpose; that the plaintiffs, who were willing to pay their said tithes to either of them, might know with certainty to whom the said tithes of right belonged; that in the mean time, upon payment by the plaintiff *William Hunt* of the sum of one pound, fourteen shillings, and threepence, and by the plaintiff *J. Howard* of the sum of one pound, seven shillings, and ninepence, into court, being the tenth part of the value of the agistment of all the barren cattle so fed and depastured by them since *Lady Day* 1783, and which said sums the plaintiffs respectively offered to pay, all the said defendants might be restrained by injunction from proceeding against the plaintiffs in this court, or at law, or in the spiritual court, touching the matters aforesaid.

The defendant *Etherington* put in his answer to the same purport as the original bill; and insisted on his claim to the said tithes.

The defendants the dean and chapter of *Durham* said, that they, and those whose estate they had, and under whom they claimed to be impropriators or owners of the parish-church of *Fisblake* (a), were, and had been for a long series of years, for time whereof the memory of man was not to the contrary, seised in fee, or otherwise, by ancient and immemorial usage and prescription, well entitled to the tithe of agistment of all kinds of barren and unprofitable cattle fed and depastured by any occupiers of ancient messuages, cottages, and frontsteads, situated in the said parish in respect of or in right thereof, and of the lands occupied therewith upon *Farr Common* or *Thorne North Common*, in whatever place or parish such common was situated; that their lessee claimed the same; but that, if omitted to be received, they ought not to be bound by such laches; and they insisted on such right of commonage and tithes of agistment.

The defendant *Gadby* said, that he was lessee, under the dean and chapter of *Durham*, of the impropriate rectory of *Fisblake*;

(a) See *Simpson v. Hill*, vol. 1, page 255.

that

that he claimed to be well entitled to the tithes of agistment of all kinds of barren and unprofitable cattle fed and depastured by any occupiers of ancient messuages, &c. situate in the said parish, and in respect or in right thereof, or of the lands occupied therewith, upon the said *Thorne North Common*; and he insisted on his right to the aforesaid tithes of agistment of all barren and unprofitable cattle fed and depastured by any occupiers of ancient messuages, &c. in the said parish of *Fisblake*, in respect of such ancient messuages, &c. upon the common ground called *Thorne North Common*, in the parish of *Thorne*; that the defendant *Etherington*, as impropiator of the parish of *Thorne* (a), was not entitled thereto; and that the defendants ought not to make him any satisfaction for the same.

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et al. *Contra*.

The plaintiffs replied; and witnesses were examined on the behalf of the defendants only; and upon hearing counsel for all parties on both causes; and reading the answers; and several depositions of witnesses in the original cause; and reading, by consent, in the first cause, the depositions taken in the second cause, a trial at law was directed on the following issue, to wit,

“ Whether, from time whereof the memory of man is not to
 “ the contrary, the occupiers of all ancient messuages, cottages,
 “ or frontsteads, situate, lying, and being, within the manor or
 “ lordship of *Hatfield*, in the county of *York*, and in the several
 “ parishes lying within the same manor, have paid or made
 “ satisfaction for, and have been used and accustomed to pay or
 “ make satisfaction for, and of right ought to pay or make satis-
 “ faction for, the tithes of all kinds of titheable matters arising
 “ to them in and upon such respective ancient messuages, cot-
 “ tages, or frontsteads, or the lands thereto respectively belong-
 “ ing, situate, lying, and being within the same manor, or in and
 “ upon the waste lands or commons situate, lying, and being
 “ within the same manor, fed and depastured by them respect-
 “ ively in right of their said respective ancient messuages,
 “ cottages, and frontsteads, to or to the use of the rector or
 “ vicar for the time being, his farmer or lessee, of the parish in
 “ which such their respective ancient messuages, cottages, or
 “ frontsteads, are situate, whether the waste lands or other lands
 “ or grounds in or upon which such titheable matters arose are
 “ situate in the same parish with such respective ancient mes-
 “ suages, cottages, or frontsteads, or not, and notwithstanding
 “ all or any of the waste lands, commons, or other lands or
 “ grounds in and upon which such titheable matters respectively
 “ arose, are in any parish or parishes within the same manor
 “ different from that in which such respective ancient messuages,
 “ cottages, or frontsteads, are respectively situate.”

(a) See *Popplewell v. Canby*, vol. 2. page 399. and *Popplewell v. Hatfield*, vol. 2. page 398.

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The defendants *Hunt* and *Howarth* to be plaintiffs, and the plaintiff *Etherington* to be defendant; to be tried by a special jury; the judge to indorse special matter on the *possea* as to any other custom; the original cause to be continued in the paper to be further heard after the trial; the consideration of costs and all further directions to be reserved; and the plaintiffs in the second cause to pay to the several defendants therein their respective costs of the said suit to be taxed.

The issue was tried, and the jury found the custom as it was stated in the issue.

THE COURT, on the eleventh of *July* 1792, upon reading the decree and *possea*, ordered the bill to be dismissed; and each party to abide by their own costs, both at law and in this court.

THE COURT FULL.

MILARY TERM
 31. Geo. 3.

JONES *against* LE DAVIDS.

Caermarthenshire, 7th February 1791.

The impropriator of *Saint Peter's*, in *Caermarthenshire*, is entitled to the tithes of the waste lands in the said parish belonging to the corporation of *Caermarthen*, they not being barren lands within the meaning of the statute 2. & 3 *Edw. 6. c. 13. s. 5.*
 See *Jones v. Howell*, ante, page 10.

THE impropriator of *Saint Peter*. in *Caermarthen*. claimed the great and small tithes of a parcel of land in the possession of the defendant.

The defendant said, that he rented a parcel of waste or barren land belonging to the corporation of *Caermarthen*, situate in the parish of *Saint Peter*, whereon he sowed some wheat; but he insisted, that no tithe was payable for the said wheat, the land whereon the same grew being within the meaning of the statute 2. & 3 *Edw. 6. c. 13. s. 5.*; and that the land he so rented was only two acres, for which he paid annually eight shillings and sixpence.

THE COURT, on reading the depositions, and the deposition of *William Brook*, a burgess of the borough of *Caermarthen*, though objected to on the ground of his being interested in the event of this suit, ordered the cause to stand over for the judgment of the Court; and on the seventh of *February* 1791, the deputy remembrancer was directed to take an account of the tithes of the said land as prayed by the bill, with costs.

MARKHAM

MARKHAM *against* LAYCOCK.HILARY TERM
31. GEO. 3.*Yorkshire, 7th February 1791.*

THE vicar of *Carlton*, in the county of *York*, claimed all the tithes arising therein, except the tithes of corn and grain, particularly the tithes of hay, agistment of barren cattle, of calves, wool, and lambs, in kind.

The vicar of *Carlton*, in *Yorkshire*, claims all the tithes of the parish, except of corn and grain,

particularly the tithe of hay and the agistment of barren cattle.

The defendant *J. Birtwhistle* said, that he believed the plaintiff was entitled to the tithes of wool, lambs, and calves, but not to the tithe hay in kind, nor to the agistment tithes of barren and unprofitable cows, fed or depastured in the parish; for that there was, and had been from time immemorial within the said parish of *Carlton*, a custom that the owners and occupiers of lands therein should pay at *Midsummer Day*, or as soon after as demanded, to the vicar of the parish, the sum of threepence for each and every ox-gang of land, containing sixteen acres of arable, meadow, and pasture, after the rate of seven yards to the pole or perch, so by them occupied, as a *modus* in lieu of the tithes of grass made into hay yearly arising on the said ox-gang of land; that the said *modus* had been accepted as such by the vicar; and that he was ready to pay the same to the plaintiff, in lieu of the tithe of grass made into hay; and he insisted, that he ought to accept it. The defendant further stated, as to the tithe of barren and unprofitable cattle kept and depastured upon lands in the parish, that the owners and occupiers of lands therein had immemorially paid yearly at *Easter*, or as soon after as demanded by the vicar, the sum of one penny, for every barren and unprofitable beast fed or depastured upon their respective grounds in the parish; and that he had always been ready and willing to pay the same. He further said, that he occupied lands in the parish; and he set forth the quantity and quality of each species, and the values of the titheable matters he had thereon; and said, that he had always been ready to pay the said two *moduses*, and to set out to the plaintiff the tithes of wool, lambs, and calves, and any other tithes legally due to him; and that he should have tendered the same, had not the plaintiff given public notice in the church, that he would not accept from his parishioners any tithes as the same had been usually paid.

The defendant says there is a *modus* of 3d. an ox-gang payable every *Midsummer* in lieu of tithe hay;

and another *modus* of 1d. payable at *Easter*, in lieu of agistment tithes;

The defendant *T. Laycock* admitted, that the plaintiff was entitled to the tithes of wool, lambs, and calves; but denied, that he was entitled to the tithe of hay in kind, or to the agistment tithe of barren and unprofitable cattle fed or depastured in the parish aforesaid; and insisted upon the said ancient *moduses* in lieu thereof, averring that he had been always ready and wil-

that the vicar is entitled to the tithes of wool, lambs, and calves in kind;

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ling to pay the same; that he had paid the plaintiff the tithe fleeces of wool severed from his sheep; that he was always ready to set out the tithes of wool, lambs, and calves, and any other tithes that were legally due to him; and that he should have tendered the *modus*es and the said tithes in kind, had not the plaintiff given the public notice as aforesaid.

that being one of the people called *Quakers* he had not paid the tithe of the *modus*es; but that the vicar might have taken them;

The defendant *B. King* said, that the plaintiff was not entitled to the tithes of grass made into hay, nor the tithes of depasturing barren and unprofitable cows, in kind, but to the said *modus*es; that he had refused to pay the tithes, as being one of the people called *Quakers*; but that he acquainted the plaintiff that he might take by warrant of distress what he conceived due to him, and that he should meet with no resistance. He said, that he had been summoned before two magistrates at the instance of the plaintiff for non-payment of tithes, and that they had dismissed the demand, the same being illegally or unreasonably founded.

The defendant *W. Wormald*, being also a *Quaker*, put in his answer to the same effect.

that there is another *modus* of 3l. a-year payable at *Midsummer*, in lieu of the tithes of *Carlton Hall Farm*.

The defendants *T. Moorhouse* and *J. Sugden* insisted, that, from time whereof the memory of man is not to the contrary, a *modus* of three pounds a-year had been paid at *Midsummer* in each year, or so soon after as demanded, by the owner of an ancient capital manor house, and divers farms and lands thereunto belonging, situate in the parish of *Carlton*, and in the several occupations of the defendants *T. Moorhouse*, *J. Sugden*, and *J. Butler*, containing altogether about two hundred and sixty acres, by estimation in statute measure, the property of *Sir John Goodricke, Bart.* in lieu of the tithes in kind of hay, agistment of barren and unprofitable cattle, foals, calves, wool, lambs, and all other tithes whatsoever due or payable to the vicar of the said parish church, for or in respect of the said ancient capital messuage, farms, and lands; that the said *modus* of three pounds had been immemorially, until the plaintiff refused to receive the same, paid to, received, and accepted by the vicar of the said parish, in lieu of the said tithes; and that they were willing to pay the same.

The cause heard.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and on hearing counsel several days; and reading for the plaintiff from the consistory court of *York*, out of an ancient book of records from the registry of that court, in which is contained the following endowment, entitled, "*Ordinatio Vicarie Ecclesie de Calton in Craven*;" an endowment, dated *apud Cavvode y Kaln. Julii, 1311^o*, in a book entitled "*Greenfield, 2d part, page 53*;" several depositions on behalf of the defendants; the *Midsummer* book, importing to be a tithe account, kept by *Mr. Tennant*, the late vicar of the

parish of *Carlton*, out of which several entries were read touching *Carlton Hall Farm modus*; several entries out of the *Easter* books kept by the said *Mr. Tennant*, numerating oblations, hay, &c. for *Carlton Hall Farm*; a terrier of the vicarage of *Carlton*, in *Craven*, dated in 1684, signed *Thomas Wildeman, Vic. de Carlton*, the church-wardens, and eight persons stiled "able parishioners;" another terrier, dated the thirteenth of *June* 1748, signed *H. Tennant*, vicar, three church-wardens, and six persons stiled "principal inhabitants;" an indenture of feoffment, dated the sixth of *July* 1640, made between *William Moore* of *Carlton*, and *John Layland*; and upon hearing the reply, the cause was adjourned for the opinion of the Court.

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EYRE, *Chief Baron*, now delivered the opinion of the Court; and the following issue was thereupon ordered to be tried:

" Whether, from time whereof the memory of man is not to
" the contrary, hitherto a certain *modus* or customary payment
" of three pound a-year hath been and now is payable at *Mid-*
" *summer* in each year, or as soon after as demanded, by the
" owner or owners for the time being of an ancient capital mes-
" suage, mansion, or mansion house, and divers farms and
" lands thereunto belonging, all situate in *Carlton* and *Lothers-*
" *dale*, or one of them, within the parish of *Carlton*, in the
" county of *York*, called *Carlton Hall*, or the *Manor House* and
" *demesne land* of *Carlton* aforesaid, and now or late in the several
" occupations of the defendants *T. Moorhouse*, *J. Sugden*, and
" *J. Butler*, and containing altogether two hundred and sixty
" acres, by estimation in statute measure, to the vicar of *Carl-*
" *ton* aforesaid, for the time being, or his farmer or lessee, far-
" mers or lessees, for and in lieu and in full satisfaction of and
" for all the tithes in kind of hay, agistment of barren and un-
" profitable cattle, foals, calves, wool, lambs, and all other
" tithes whatsoever, due and payable to the vicar of the said
" parish church for the time being, for or in respect of the said
" ancient capital messuage, farms, and lands."

An issue directed
to try the *modus*
of 3l. a-year in
lieu of the tithes
of hay, agistment,
foals, calves,
wool, lambs, and
other tithes of
Carlton Hall
Farm.

The defendants *T. Moorhouse* and *J. Sugden* to be plaintiffs at law, and the vicar to be defendant; to be tried by a special jury; and the judge to be at liberty to indorse, &c. &c.

THE COURT further ordered, as the *modus* of threepence an ox-gang, in lieu of the tithes of hay, had not been proved, and such *modus* not being good in law, in the manner in which it was laid (a), the deputy remembrancer to take an account of the tithes of hay, and also the tithes of agistment, calves, wool, and lambs arising upon the lands in the said several defendant's occupations, in the said parish of *Carlton*; and the con-

The *modus* of 3d.
an ox-gang in
lieu of tithe hay
improperly laid;

the tithes of hay,
calves, wool,
lambs, and agist-
ments, except of
Carlton Hall
Farm, decreed.

(a) See *Markham v. Wilkinson*, post, the third of March 1793, Hilary Term, 33. Geo. 3. post. page 398.

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The issue tried
and a verdict
found that the
3l. a-year is pay-
able in lieu of the
tithes of milk,
wool, lambs, and
calves only.

sideration of costs be reserved till after the trial and report.

The issue was tried, and the jury found, that there was no such *modus* as alledged by the plaintiffs in the said issue, but they found, " That, from time whereof the memory of man is
" not to the contrary, hitherto a certain *modus* of three pounds
" a-year hath been and now is payable at *Midsummer* in each
" year, or as soon after as demanded, by the owner or owners
" for the time being, of the messuage, mansion, or manor
" house, farms, and lands thereunto belonging, in the said issue
" mentioned, to the vicar of *Carlton* for the time being, or his
" farmer or lessee, farmers or lessees, for and in lieu and in full
" satisfaction of and for all the tithes in kind of milk, wool,
" lambs, and calves, due and payable to such vicar of the said
" parish for the time being for and in respect of the said an-
" cient capital messuage, farms, and lands."

The tithe hay of
Carlton Hall Farm
decreed in kind,
and the *modus* as
found by the ju-
ry.

THE COURT, upon reading the decree and *possea*, and hearing counsel on both sides, ordered, on the twenty-first of *June* 1792, the deputy remembrancer to take an account of what was due from the defendants *Moorhouse* and *Sugden* for the tithes of hay and of agistment of barren and unprofitable cattle demanded by the bill; and also of what was due from the said defendants for the said *modus* of three pounds a-year, as found by the jury; but without costs: the plaintiff to have his costs at law.

Bill dismissed as
to the tithes of
calves, wool, and
lambs.

THE COURT further ordered the bill to be dismissed without costs so far as the same sought an account of the tithes of calves, wool, and lambs.

The deputy
makes his report.

The deputy, in pursuance of the original decree dated the seventh day of *February* 1791, made his report on the twenty-eighth of *January* 1795, and on the third of *February* 1795, certified that he had proceeded to take the account as against the defendants *W. Wormald* and *B. King*, the plaintiff having waived taking the account directed by the said decree, as against the other defendants, and that there was due to the plaintiff from them the several sums mentioned in his report for the several years for the tithes of gra's made into hay, and of the agistment of barren and unprofitable cattle fed and depastured by them on the lands and grounds in their respective occupations, as also of calves calved, lambs dropped, and wool clipped by them within the said parish of *Carlton*; and the said report was confirmed, and the defendants ordered to pay the plaintiff, or his order, the several sums reported due to him from them, together with the said plaintiffs costs of this suit, to be taxed.

The report con-
firmed.

And it being suggested to the Court, that under a certain agreement, dated the eleventh day of *April* 1791, certain sums of

of money had been paid to the plaintiff on the part of the defendants *B. King* and *W. Wormald*;

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THE COURT further ordered the deputy to enquire and report whether any and what sums of money had been paid on that account; and that what he should find to have been so paid be deducted out of the said taxed costs.

GARNONS *against* BARNARD.

Yorkshire, 7th July 1791.

TRIN. TERM,
31. GEO. 3.

THE vicar of *South Cave*, in the county of *York*, claimed all the tithes of the parish, except the tithes of corn, hay, wool, and lambs, which were payable to the defendant the impropriator, particularly the tithes of turnips, which had been let growing on the ground to persons who had kept and depastured sheep and other cattle thereon; and the agistment of a number of barren cows, horses, bullocks, sheep, and other unprofitable cattle, which the defendant had depastured upon other parts of such turnips so grown by him, and upon grass growing upon his lands.

The vicar of *South Cave*, in *Yorkshire*, and not the impropriator, is entitled to the agistment tithes of sheep, lambs, and all barren and unprofitable cattle in kind; but the impropriator is entitled to the tithes of hay, wool, and lambs.

The defendant said, that he was seised of or entitled to the prebend of *South Cave*, and the rectory impropriate of the said parish, as parcel of the said prebend; that, as such, he was entitled to the tithes of corn, hay, wool, and lambs, and of all other titheable matters arising or renewing in the said parish, to which the rector impropriate thereof was entitled, particularly to the agistment tithes of sheep and barren cattle depastured therein, excepting such parts the tithes of which he had sold and conveyed to other persons. He admitted, that he occupied *Mount Airy Farm*, consisting of four hundred acres of land; and that he had sown several acres thereof with turnip seed; but he denied, that he had caused any quantity of turnips to be pulled or drawn therefrom, or that he had sold any of such turnips, or had otherwise converted them to his own use, except by agisting sheep thereon; and he insisted, that the plaintiff, as vicar, was not entitled to the tithes of the turnips sowed by him, but that he, as impropriator, was entitled to the tithes of agistment of the sheep fed thereon. He set forth the value he had received for the eatage of the said turnips; and said, that he could not tell whether such sheep, after they were depastured on the said lands, and before they were shorn, had been removed out of the parish; and, insisting that he was entitled to the tithe agistment thereof, said, that he should not pay the plaintiff the agistment tithe of any sheep he had depastured on the said turnips, or make him any satisfaction in respect thereof. He denied, that he had depastured for hire, or otherwise upon his turnips, or on any other part of his said lands.

S.C. Anst. Rep.
296.
See Clerke v.
Sunderland, vol.
1. page 175.

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lands in the said parish, any barren cows, horses, bullocks, sheep, or other unprofitable cattle, except as aforesaid, and except several young horses and other young cattle, which had run on his estate; that most of the horses had been used in husbandry, but that he could not set forth the value of agistment of such horses. He further said, that, for a great number of years past, the sum of one penny for each sheep, and one half-penny for each lamb depastured in the parish, and sold out after *Candlemas*, and before the next shearing time, had been paid to the rector; that no payment had been made to the vicar for the tithe of agistment of such sheep; and that such non-payment was evidence that the vicar was not entitled to the tithe of agistment of sheep depastured in the parish. He further said, that he had very lately purchased the rectory, and not being fully acquainted with the extent of the profits thereof, he, as one of the proprietors of land therein, had been prevailed upon to sign a *terrier* of the houses, lands, profits, and dues belonging to the vicar; but that he signed the same without any apprehension that it would affect his right as rector impropriate, and submitted, that the same, under the circumstances, should not prejudice him.

The plaintiff replied; and witnesses were examined on both sides; and upon hearing counsel on both sides; and reading the following evidence for the plaintiff, *viz.* a manuscript book from *the Cottonian Library*, in *THE MUSEUM*, marked *Cladius, B. 3*; a manuscript register book, entitled *Doomsday Book*, deposited in the registry of the dean and chapter of *York*; the depositions of several witnesses examined in the cause; several *terriers* from *September 1716*, and ending the thirteenth of *July 1781*, with a memorandum written under this one and signed *T. Robinson, Henry Barnard*, the present defendant, and others; several accounts kept by *J. Robinson*, the late vicar, of his small tithes and *Easter dues*; and reading the following evidence for the defendant; the depositions of several witnesses taken in this cause, and a bill filed in this court in *Easter Term*, in the twenty-seventh year of *Charles the Second (a)*;

THE COURT ordered the deputy remembrancer to take an account of the tithe of agistment demanded by the bill, but without costs.

EYRE, *Chief Baron.*

HOTHAM, *Baron.*

PERRYN, *Baron.*

THOMSON, *Baron.*

By an order of this court, dated the twenty-seventh of *January 1792*, upon the petition of the defendant, the cause was

(a) *Clarke v. Sunderland*, vol. 1. page 175.

ordered

ordered to be *reheard* upon his making the usual deposit to abide the event of such rehearing: the cause came on to be reheard; when, upon hearing counsel several days, and reading, by consent, the office copies of the evidence read on the former hearing, with an addition of a terrier without date, signed *D. Garnons*, vicar; and upon hearing the reply, it was ordered to stand over for the judgment of the Court; and on the sixth of *July* 1793, the cause standing in the paper for the judgment of the Court;

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against
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MACDONALD, *Chief Baron*, delivered the same accordingly (a), and the said decree, on the seventh of *July* 1791, was affirmed; and the deputy ordered to pay the plaintiff the deposit of ten pounds.

MACDONALD, *Chief Baron*.
HOTHAM, *Baron*.
PERRY, *Baron*.
THOMSON, *Baron*.

The defendant *H. B. Barnard* appealed against the two decrees of the seventh of *July* 1791, and the twenty-seventh of *January* 1792, to THE HOUSE OF LORDS, and the said decrees were reversed, and the court of exchequer ordered to direct a trial at the next assizes for the county of *York*, or at such other time as the court should think fit, upon the following issue: "Whether the vicar be entitled, by endowment or otherwise, to the tithe of agistment within the parish of *South Cave*." The judge to endorse special matter on the *posse*; the vicar to be plaintiff at law, and the impropiator to be defendant; and further directions to be reserved till after the trial.

On the tenth of *June* 1797, the decree of the house of lords was made an order of this court; and the said issue was directed to be tried by a special jury of the said county.

The trial was accordingly had, and the jury found, "That the plaintiff *Daniel Garnons* was and is entitled by endowment or otherwise to the tithe of agistment within the parish of *South Cave*, in manner and form as in the declaration is alleged."

This cause came on on the fourteenth of *May* 1798 to be further heard upon the equity reserved; when upon hearing counsel on both sides; and upon reading the decrees, and the *posse*;

THE COURT ordered the deputy to take an account of what was due to the plaintiff from the defendant for the tithe of agistment demanded by the bill, with costs at law, but the Court did not think fit to order costs in equity on either side.

(a) See the judgment in Anstruther's Reports, vol. 1. page 96.

TRIN. T RM,
31. GEO. 3.

RICHARDSON *against* HOWARD.

Durham, 29th July 1791.

The vicar of *Coniscliffe*, in *Durham*, is entitled to all the small tithes of the parish in kind.

THE vicar of *Coniscliffe*, in the county of *Durham*, claimed all the small tithes, particularly the agistment tithes of barren and unprofitable cattle.

The defendant *T. Rickaby* and others admitted, that the plaintiff was vicar, and entitled to the tithes of wool, lambs, and calves; and said, that the rectory formerly belonged to the monastery of *Saint Alban's*; that it afterwards became vested in *James the First*, by the statute for the dissolution of monasteries, and, together with all the tithes, as well great as small, had by mesne conveyances become the property of the defendants *the Howards*.

The defendant *P. Howard* denied, that the plaintiff was entitled to the small tithes throughout the parish, excepting the tithes of wool, lambs, and calves; and said, that the rectory formerly belonged to the abbot and convent of *Saint Albans*; that the same afterwards became vested in the crown; that *James the First*, by his letters patent, dated the twenty-eighth of *July*, in the ninth year of his reign, granted the rectory and all the tithes yearly arising in the parish to *Francis Morrice* and *Francis Phillip*, their heirs and assigns for ever; that the said rectory and tithes were afterwards conveyed to *Lord Howard* and from him to the defendant; and that he claimed, by virtue of the said grant, all the tithes, great and small, throughout the parish, except the tithes of wool, lambs, and calves.

The defendant *H. Howard* put in the like answer; and said, that his father had conveyed to him all his estate and interest in the said rectory and tithes, by indentures of lease and release, dated respectively the tenth and eleventh of *November 1788*.

The plaintiff replied; and witnesses were examined on the part of the plaintiff; and upon hearing counsel for all parties; and reading the following evidence for the plaintiff; an office copy of an entry of the confirmation of the appropriation of *Over Cunselyve*, in the county of *Durham*, to the monastery of *St. Alban's* deposited in the register office of the dean and chapter of the cathedral church of *Durham*, intitled "*Confirmatio Appropriationis Ecclesie de Over Cunselyve Monasterio de Saint Albano*;" the depositions of several witnesses taken in the cause; a book of accounts, containing the following entry in the third leaf thereof, viz. "*John Ovington, turnips*;" and on full debate of the matter;

THE COURT, by consent of the impropiator, ordered the plaintiff's right to the tithe of agistment and the other small

tithes demanded by his bill to be established with costs, as between party and party.

RICHARDSON
against
HOWARD.

THE DEAN AND CHAPTER OF BRISTOL *against*
DONISTHORPE.

MICH. TERM,
32. GEO. 3.

Somersetshire, 18th November 1791.

THE bill stated, that the plaintiffs, the dean and chapter of the cathedral church of the holy and undivided trinity of *Bristol*, being seised in fee of the rectory of *Somerton*, in the county of *Somerset*, and of the glebe lands, great tithes, oblations, obventions, emoluments, and appurtenances arising therein, by indenture, dated the twenty-fourth of *June 1777*, and in consideration of the surrender of a former lease, and of a competent sum to them paid by *Edward Knatchbull*, and of the yearly rents and covenants therein comprised on his part to be done and performed, demised to the said *Edward Knatchbull* all that parsonage of *Somerton*, with the barn, glebe lands, tenements, tithes, oblations, &c. to the same belonging, to hold for three lives at and under the yearly rents and covenants therein mentioned; that within the said rectory there are numbers of acres of meadow land, which were usually mowed, and also certain other lands called *Due Fodder Lands*, and which of late years had been lain down for grass; that the defendants, for several years past, had occupied several farms, consisting among other lands, of a great number of acres of meadow and *due fodder lands* in the parish, and had cut therefrom hay and hay grass, clover and clover grass, the tithes of which they had refused to pay. The bill therefore prayed an account and payment of the said tithes.

The lessee of the dean and chapter of *Bristol*, as impropiator of *Somerton*, in *Somersetshire*, claims the tithes hay of those lands which were formerly called *Ancient Boord* or *Stock Meadow*; and of the lands lying in *North Moor*, in the said parish.
S.C. Anstr. 272.

The defendants said, that within the said parish there were a great number of acres of ancient meadow land, which had been immemorially mown; that part thereof, viz. *South Mead*, *Cow Leaze*, and *Cary Mead* lying near to a bridge called *Cary Bridge*, and the meadow on the same floor or level with *Cary Mead*, had been formerly called *Ancient Boord*, or *Stock Meadow*; that the other part of the said ancient meadow land was called *North Moor*; that there were within the rectory other lands called *the Fodder Lands*, *Upland*, or *Land Meadow*, the same having been converted from arable and pasture into meadow ground; and that *New Moore*, or *New Moore Close*, was part thereof; that they occupied farms, consisting partly of the ancient meadow lands in *South Mead* and *Cary Mead*, and the meadows upon the same level or floor with *Cary Mead*, and near thereto, which had been formerly called *Ancient Boord*, or *Stock Meadow*, and particularly of some of the ancient meadow lands lying in *North Moor*, but not any *Due Fodder Lands* in the parish;

The defendants set up a *modus* of 2d an acre in lieu of the tithe hay of the lands called *Ancient Boord* or *Stock Meadow*, and another *modus* of 1d an acre in lieu of the tithe hay of the land lying in *North Moor*; and tender the arrears thereof.

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parish; that they had cut hay therefrom, but neither clover or clover grafs; and that they had not taken or carried away all or any part of the said hay, except upon and from the ancient meadow lands in *South Mead* and *Cary Mead*, and the meadows upon the same floor or level with *Cary Mead* aforesaid, and near thereto, which had been formerly called *Ancient Boord* or *Stock Meadows* and the ancient meadow lands lying in *North Moor*, so occupied by them respectively as aforesaid, without setting out the tithes thereof for the plaintiff; that, on the contrary, the tithe of all the hay cut down upon the said farms and lands, except the said ancient meadow land as aforesaid, had been fully and fairly set out, taken, and carried away by the plaintiff's agent; and they denied, that the plaintiffs were entitled to the tithe of hay in kind from the said ancient meadow lands so occupied by them, for that the occupiers of meadow lands lying in *South Mead* and in *Cary Mead*, and the meadows upon the same floor or level with *Cary Mead*, and which had been formerly called *Ancient Boord* or *Stock Meadow*, and each of them had immemorially paid, and still ought to pay to the rectors of the said rectory or parish aforesaid, their lessee, or tithe-gatherer yearly, on *Easter Monday, old stile*, or so soon after as demanded, twopence for each and every acre of the said *Ancient Boord* or *Stock Meadow*, so by them respectively occupied within the said parish of *Somerton*, or the titheable places thereof, as and for a *modus* and ancient payment, and in lieu and satisfaction of the tithe of hay and hay grafs yearly arising, renewing, and increasing in and upon each and every acre of the said meadow lands, formerly called *Ancient Boord* or *Stock Meadow*; that the same had always been accepted and received by the said rectors, their lessee, or tithe gatherer accordingly; and that the same had been in fact immemorially so accepted and received by them respectively down to the year 1670, since which time they believed no payment or satisfaction whatever had been made to or accepted by them or either of them for or on account thereof, or otherwise respecting the tithe hay thereof. They further stated, that the occupiers of all the meadow lands lying in *North Moor* had immemorially paid to the rectors of *Somerton*, their lessee, or tithe gatherer yearly on *Easter Monday, old stile*, or so soon after as demanded, one penny for each and every acre of the said meadow land lying in *North Moor* aforesaid, so by them respectively occupied in the said parish, as and for a *modus* and ancient payment, and in lieu and satisfaction of the tithe of hay and hay grafs made into hay yearly arising, growing, renewing, and increasing in and upon each and every acre of the said meadow land in *North Moor* aforesaid; and that the same had been immemorially accepted and received by the said rectors, their lessee, or tithe-gatherer accordingly; and they insisted upon the aforesaid *moduses* for the tithe hay of the meadow lands so occupied by them respectively, and hoped that

that they should have the same benefit as if they had pleaded the same in bar. They further said, that in regard to the said *Ancient Boord* or *Stock Meadow*, so covered by the said *modus* of twopence an acre for the tithe hay thereof, the same was worth from thirty shillings to fifty shillings an acre *per annum*; but that the meadow lands in *North Moor*, so covered by the *modus* of one penny an acre for the tithe hay thereof, were not in general worth more than ten shillings an acre *per annum*. They further said, that they had set forth a full and particular account of the number of acres of meadow lands they respectively occupied, and the yearly value thereof, and the particular quantity of hay and hay grafs made into hay which they had cut and mowed, and the value thereof, and what was due from them respectively to the plaintiffs for and on account of the said *moduses* for the tithe hay on the said meadow land in each year, and that they had ever been ready, and hereby tendered, and offered now to pay to them what was due from them respectively for and on account of the said *moduses*, if they should think proper to receive the same: and they stated a suit in chancery in 1633, *T. Preeno*, the then lessee, under the dean and chapter of the rectorial and great tithes in the said parish of *Somerton*, against *J. Fisher* and others, then occupiers of *Somerton Farm*, to conform to a custom, as therein mentioned, and obtained a decree respecting the wheat, but that no mention of tithe hay whatever was therein made; and they said that the lands so occupied by them were part of the said farm.

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The plaintiff replied; the defendants rejoined; but before any witnesses were examined, the defendants, on the eleventh day of *November* 1789, obtained an order of this Court, whereby it was prayed, that the plaintiffs might accept from them the several sums tendered by their answers, with costs of suit to that time, as and for their several and respective *moduses* particularly specified in their answer; and thereupon the Court took notice of the said tenders, and said that they would take the same into consideration at the hearing of this cause (a).

The defendants alter answer, and before any witnesses were examined, pray that they may be allowed to pay the owners of the *moduse*, such costs to that time; but it is refused.

A commission issued for the examination of witnesses; and witnesses on both sides were examined; and upon hearing counsel for all parties; and the defendant's counsel objecting for want of the vicar of the said parish being made a party to the said bill, and the said objection being over-ruled by the Court; and upon reading the evidence for the plaintiffs; and the depositions of several witnesses taken in the said cause; and a receipt

A commission issues, and witnesses are examined.

An objection that the vicar ought to have been a party over-ruled.

(a) The rule was refused by the Court on the ground that such a tender is never allowed, except where the defendant offers to pay the thing demanded, that is the value of the tithes themselves, and not where he tenders a

less sum to make good the bar he sets up against the demand; but the Court said, that if the plaintiff proceeded after such tender it would be at the peril of costs. S. C. Anstr. Rep. 272.

signed

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Evidence read by
consent.

signed *Edward Mitchell*, dated the thirteenth of *April 1784*; and upon reading the following evidence for the defendants, viz. office copies of a bill filed in the high court of chancery in *Trinity Term 1633*, by *J. Preece v. J. Fisher* and others; the answers; an ancient copy of a replication; and the draft of a rejoinder between the said parties, which was objected to by the plaintiff's counsel, but the objection was over-ruled, and the said copies read; and also reading the depositions of several witnesses taken in that cause on behalf of the plaintiffs; a decree, dated the second of *November*, in the eleventh year of *Charles the First*; a receipt, dated the eighteenth of *October 1661*, from *W. Preece* to *J. Fisher*; two other receipts, dated the ninth of *November 1760*, and the twenty-sixth of *November 1672*; and on hearing the plaintiff's counsel in reply, and the plaintiff's counsel praying issues;

Issues directed
to try.

THE COURT directed issues on the *moduses*, as stated in the answers, viz.

1st. the *modus* of
2d. an acre for
the tithe hay a-
rising on the an-
cient *Boord* or
Stock Meadows.

FIRST, "Whether, under and according to an ancient and laudable custom within the said parish of *Somerton*, the occupiers of the meadow lands lying in *South Mead*, and in *Cary Mead*, and the meadows upon the same floor or level with the said *Cary Mead*, in the said parish of *Somerton*, and which were formerly called *Ancient Boord* or *Stock Meadows*, and each of them have, from time whereof the memory of man is not to the contrary, severally paid, and ought always to have paid, and still ought to pay to the rectors of the said rectory and parish of *Somerton* aforesaid, their lessee, or tithe-gatherer yearly on *Easter Monday, old stile*, or so soon after as demanded, twopence for each and every acre of the said *Ancient Boord* or *Stock Meadows*, so by them respectively occupied in the said parish of *Somerton* and the titheable places thereof, as and for a *modus* or ancient payment, and in lieu and satisfaction of the tithe of hay and hay grafs yearly arising, growing, renewing, and increasing in and upon each and every acre of the said meadow lands, formerly called *Ancient Boord* or *Stock Meadows*, or not."

2dly. the *modus*
of a 1d. an acre
for the tithe hay
of the *North*
av. v. v.

SECONDLY, "Whether the occupiers of all the meadow lands lying in *North Moor*, in the parish of *Somerton*, and each of them, have and hath, under and according to an ancient and laudable custom within the said parish, from the time whereof the memory of man is not to the contrary, severally paid and ought to pay the rectors of the said rectory and parish of *Somerton*, their lessee, or tithe-gatherer yearly, on *Easter Monday, old stile*, or as soon after as is demanded, one penny for each and every acre of the said meadow land lying in *North Moor* aforesaid, so by them respectively occupied in the said parish of *Somerton*, and the titheable places thereof,

“ thereof, as and for a *modus* and ancient payment, and in lieu
 “ and in satisfaction of the tithe of hay and hay grafs made
 “ into hay, yearly arising, growing, renewing, and increasing
 “ in and upon each and every acre of the said meadow lands in
 “ *North Moor* aforesaid, or not.”

THE DEAN
 AND CHAPTER
 OF BRISTOL
against
 DONISTHORPE.

The defendants in equity to be plaintiffs at law; and the judge to be at liberty to indorse, &c.

By a subsequent order, dated the sixth of *February* 1793, on the defendants informing the Court, that the said issues had not been tried, and that the plaintiff *J. E. Arundel* had given notice in writing to them, that he disclaimed and relinquished, as far as he lawfully could, as lessee of the great tithes of the parsonage of *Somerton*, all his right and title to the great tithes in kind arising from certain lands called *South Mead* and *Cary Mead*, and also to the great tithes in kind arising from certain other lands called *North Moor*, situate, lying, and being within the parish of *Somerton* aforesaid, and had agreed to accept the *modus*es set up and acknowledged to be due to him in lieu of such tithes; and praying, that the said issues might be taken *pro confesso*; and upon reading several affidavits of the defendants; and an affidavit of the service of the notice of motion on the plaintiff's clerk in court; and no counsel attending on their behalf, it was ordered by the Court, that this cause should be put into the paper of causes, for the further directions of the Court therein; and in pursuance thereof the said cause now came on for further directions; when upon opening the decree and order; and reading the decree, dated the twenty-eighth of *November* 1791; and the order of the sixth of *February* last; and the order, dated the eleventh of *November* 1789, respecting the tenders made by the defendants, with costs, upon the coming in of the defendants' answer, when the Court said, they would take notice of the tenders, and take the same into their consideration at the hearing of this cause, in case the said plaintiffs should proceed therein, and not accept the said tender and costs; and upon hearing the plaintiff's counsel praying the costs to the time of the tender; and upon consideration had thereon;

The plaintiffs disclaim all title to the great tithes in kind of the lands in question; and

agree to accept the money offered as arrears of the *modus*es; and that the issues shall be taken *pro confesso*.

The Court take notice, on the hearing, of the tender made by the defendants;

THE COURT ordered the defendants to be dismissed from the bill, and all the matters and things therein contained, with costs to be taxed, from the eleventh day of *November* 1789, when the Court took notice of the defendant's tender; and to pay the several *modus*es to the plaintiffs, or one of them, as mentioned in the answers, *viz.* to the defendant *G. Donisthorpe*, the sum of five shillings and twopence; to the defendant *W. Stagg*, the sum of nineteen shillings and three halfpence; and

and order the bill to be dismissed on the defendants paying the monies tendered with costs, from the filing of the bill to the time of the tender.

THE DEAN
AND CHAPTER
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and to the defendant *J. Gill*, the sum of one pound, five shillings, and one penny, as and for their several and respective *moduses* particularly specified in the schedules of the said answer, as also the plaintiff's costs from the filing of the bill to the eleventh day of *November 1789*, the time of the said tender: the deputy remembrancer to tax all the parties their costs.

MACDONALD, *Chief Baron.*
HOTHAM, *Baron.*
PERRY, *Baron.*
THOMPSON, *Baron.*

MICH. TERM,
32. Geo 3.

TAMBERLAIN *against* HUMPHREYS.

Merionethshire, 21st November 1791.

The impropriator of the parish of *Llanegryn*, in *Merionethshire*, is entitled to the tithes of corn, hay, wool, lambs, pigs, geese, and the agistment of barren cattle in kind; and the curate is entitled to certain *moduses* in lieu of the tithes of milch cows, milch ewes, colts, and tencements.

THE bill stated, that *S. Davies* was, in *June 1761*, seised in fee of the impropriate rectory of *Llanegryn*, in the county of *Merioneth*; that, being so seised, he with his wife, by indentures of lease and release, dated the eighth and ninth of *June 1760*, conveyed to the plaintiff *Tamberlain* the said rectory, together with all tithes whatsoever arising therein for ever; that he, in *May 1784*, set and let to the plaintiffs *J. and D. Davies*, the tithes and titheable matters of the said parish for three years; that the defendants had ever since occupied lands in the parish, upon which they had depastured barren and other cattle of different kinds for hire, and on their own account for sale, the tithes of which they had refused to pay. The bill therefore prayed an account and payment thereof.

The defendants, the occupiers, admitted, that the plaintiff was entitled to the tithes of corn, wool, lambs, pigs, and geese, or to *moduses* in lieu thereof; but denied, that either he, or any one under whom he claimed, had ever received the tithes of hay, herbage, or agistment. They also admitted, that they occupied divers farms in the parish, exclusive of *the Mountain* or sheep walks, which were chiefly used for grazing sheep; that they had severally depastured upon their lands barren cattle of different kinds, but no cattle for hire, except two head, for the pasturage of which two pounds, nine shillings only had been received; and they set forth the number of cattle they had agisted; and insisted, that the tithe of agistment was not due to the plaintiffs, they not having in any manner set forth by what right they became entitled thereto; and that therefore they were not entitled to any account for such tithes, unless they could establish their right thereto, and shew an actual seisin or possession thereof, as claimed by the bill. They further insisted, that the plaintiff *Tamberlain*, and those under whom he claimed, had

not any right to such tithes of agistment; and that he never had any seisin or possession thereof; that, on the contrary, a certain portion of the said tithes had, from time immemorial, been enjoyed by *the curate*, who performed the parochial duties of the parish, as a stipend for his maintenance, particularly the tithes of hay, herbage and agistment; that there always had been within the said parish a certain *modus decimandi* accepted by the minister, of fourpence for every farm, in lieu of such tithes of hay and agistment; that the tithes of hay and agistment had never been paid in kind by the occupiers, nor demanded by *the rector* or his lessees within the said parish; that in case the rector was originally entitled to the tithes of hay or agistment, which the defendants did not admit, such *modus* of fourpence for every *ancient farm*, paid to *the curate* of the parish in lieu of tithe hay and agistment, was valid and binding upon the rector and his lessees; that the fourpence was paid for each of the said farms about *Christmas* to *the minister* who performed the parochial duties for the time being, as a *modus* in lieu of the tithes of hay and agistment; and they admitted, that they had never paid tithes of hay or agistment in kind to the plaintiffs; and insisted, that, for the reasons aforesaid, they were not liable by law to pay such tithes in kind, but that the *modus* was good and binding.

TAMBERLAIN
as 17th
HUMPHREYS.

The defendant *R. Pughe* said, that he was *the curate* of the parish; that he and his predecessors, curates of the said parish, by endowment, prescription, or otherwise, was and had been, entitled, from time immemorial, to the following *moduses* in lieu of the tithes of milk, colts, and hay arising within the parish, *viz.* for every milch cow, three halfpence; for every score of milch ewes, twopence; for every colt, fourpence; and for every tenement in the said parish, fourpence; that the said sums were paid and payable to him at *Midsummer* in each year; that he had never heard, nor did he believe, that, as curate of the parish, he was entitled to the tithe of herbage or agistment, or any part thereof, nor did he claim the same; but that the plaintiff *J. Tamberlain*, or his lessee or lessees, was or were, he believed, entitled thereto.

The plaintiffs replied; and witnesses were examined therein on both sides; and upon hearing counsel for all parties; and reading the following evidence for the plaintiff, *viz.* a lease and release, dated the eighth and ninth of *June* 1761, between *Somerset Davies* and *Isabella* his wife of the one part, and the plaintiff *J. Tamberlain* of the other part; and reading the following evidence for the defendants; *viz.* a record from THE FIRST FRUITS OFFICE of the twenty-sixth year of *Henry the Eighth*, intitled, "*Ecclesiastical Valor*"; a terrier in 1776, signed by the minister, churchwardens, and some of the inhabitants of the parish of *Llanegrin*; a like terrier of 1780; the deposition of *D. Jones*; and the said *Richard Pughe*, the curate of the

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parish, having disclaimed any right or title to the tithe of agistment within the parish, or any *modus* in lieu thereof;

THE COURT ordered the bill to be dismissed as against *Pugbe*, with costs, to be paid by the plaintiffs to him, and to be paid over again by the other defendants to the plaintiffs.

THE COURT further ordered the deputy remembrancer to take an account of the tithe of agistment arising upon the lands in the said several defendant's occupations in the parish of *Llanegrin*, with costs.

JAS. EYRE.
B. HOTHAM.
R. PERRY.
A. THOMSON.

The deputy made his report, dated the seventeenth of *April* 1793, and on the twenty-second of the same month it was confirmed, and the defendants ordered to pay the several sums reported due for the said agistment tithes.

MACDONALD, *Chief Baron*.
HOTHAM, *Baron*.
PERRY, *Baron*.
THOMSON, *Baron*.

MICH. TERM,
32. GEO. 3.

BRAITHWAITE against BOSLEY.

Middlesex, 24th November 1791.

The rector of *St. Dunstan's Stepney* claims the great and small tithes of the parish, and states that previous to the settling of the rectory in *Brasen Nose College* in the reign of *Queen Anne*, it consisted of nine hamlets.

THE bill stated, that the plaintiff was rector of the parish of *Saint Dunstan Stebonheath*, otherwise *Stepney*, in the county of *Middlesex*; that about the year 1708, the great tithes of the parish and rectory belonged to *Lord Montgomery*, eldest son of the then late *Marquis of Powis*; that before the year 1708, there was in the said parish a vicarage endowed with all the small tithes, oblations, obventions, and offerings arising therein; that the great tithes were, about the year 1708, purchased by *Brasen Nose College*, in *Oxford*, that by the 9. *Anne*, intitled "An Act for confirming to the Principal and Scholars of *King's Hall* and the College of *Brasen Nose*, in the University of *Oxford*, the Purchase of the Advowson of *Stepney* and other Churches and for settling the same for the Benefit of the College," the vicarage was united to the rectory for ever, as in the said bill was fully set forth; that previous to and at the time of passing the said act, the parish of *Saint Dunstan Stepney* consisted of nine villages or hamlets, namely, *Mile End Old Town*, *Mile End New Town*, *Ratcliffe*, *Poplar*, *Blackwall*, *Bow*, otherwise *Stratford Bow*, *Bethnall Green*, *Limehouse*, *Wapping Stepney*,

Stepney, and Spital Fields; that by 2. Geo. 2. c. 10. "the hamlet of *Wapping Stepney*, in the parish of *Saint Dunstan Stebonheath*, was made a distinct parish, and a maintenance provided for the minister of the new church there, which was consecrated by the name of *Saint George*;" that by 3. Geo. 2. c. 3. a maintenance was provided for the minister of the parish church of *Saint Mary Stratford Bow*; that by 3. Geo. 2. c. 17. the hamlet of *Limehouse* and part of the hamlet of *Ratcliffe*, in the parish of *Saint Dunstan Stebonheath* were made a distinct parish, and a maintenance provided for the minister of the new church there; and that the said new church was consecrated by the name of *Saint Anne*, and the new parish called *Saint Anne* (a); that by 16. Geo. 2. c. 28. the hamlet of *Bethnal Green*, in the parish of *Saint Dunstan Stepney*, was made a distinct parish, and a parish church erected there named *Saint Matthew*; that by virtue of the said several acts of parliament the plaintiff, as rector of *Saint Dunstan's Stepney*, was entitled to all the great and small tithes arising therein, and also to the *Easter* offerings and other dues (b) arising in the aforesaid new parishes; and that the defendants had refused under various pretences to pay the said tithes, *Easter* offerings, and other dues. The bill therefore prayed an account and payment thereof.

that the rector of *St. Dunstan's* was entitled to the great and small tithes of the remaining hamlets, and to the small tithes of the new parishes.

The defendant *Bosley* and others said, that long before the year 1710, there was within the parish of *Stepney* a vicarage endowed; that the vicar by such endowment became entitled to *moduses* in lieu of small tithes arising therein; that there then was, and from time whereof the memory of man was not to the contrary had been, within the said parish of *Stepney*, and the bounds, limits, and titheable places thereof, the following customs of tithing hay, wheat, oats, pease, beans, reeds, rye, garden wall-fruit, orchards, depasturage of any cattle not employed in the plough or pail, milch cows, the calves of the same cows falling within the said parish, pigs falling of sows kept

(a) On the nineteenth of July 1739, Trinity Term, in the thirteenth year of *George the Second*, the cause of *Lecke v. Coker* came before the court. The bill sought a discovery of and satisfaction for the tithes of milch cows, sows, garden stuff, and *Easter* offerings, which had arisen on the lands of the defendant in the united rectory of *Stepney*; and insisted, that the plaintiffs were entitled to the same, as they were, and had been during the time demanded, portionists of the said united rectory. The defendant denied, that he was, or had been during the said time or any part thereof, either an inhabitant of or occu-

pier of land within the said parish; for that his house and lands were in the hamlet of *Limehouse*; and that by 3. Geo. 2. c. 17 the said hamlet had been made a separate parish called *Saint Ann's*; and that he had paid all his tithes and dues to the minister of the new parish. The plaintiff replied; the defendant rejoined; and witnesses were examined; and on reading the said statute, and the appointment of the bishop of *London*, &c.; THE COURT dismissed the bill, by consent, with seven pounds costs only.

(b) See *Wright v. Elderton*, vol. 1. page 518.

BRAITHWAITE
against
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that by 2 Geo. 2. c. 10. the hamlet of *Wapping* was made a distinct parish; that by 3. Geo. 2. c. 3. the hamlet of *Stratford* was made a distinct parish; that by 3. Geo. 2. c. 17. the hamlet of *Limehouse* and part of the hamlet of *Ratcliffe* were made a distinct parish; that by 16. Geo. 2. c. 28 the hamlet of *Bethnal Green* was made a distinct parish;

The defendant *Bosley* insists on *moduses* in lieu of the tithes of hay, corn, pease, beans, rye, reeds, fruit, agistment, milk, calves, and sows.

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therein, viz. that every occupier of any lands and tenements within the said parish, and the bounds, limits, and titheable places thereof, had paid, and from time whereof the memory of man is not to the contrary, had been accustomed to pay for and in lieu of such of the said tithes as were great tithes, to the rector of the said parish of *Stepney* for the time being, and for and in lieu of such of the said tithes as were small tithes, to the vicar of the said parish, his farmer, or deputy for the time being annually on *Old Lammas Day* two shillings and sixpence for every acre of grafs mowed, cut, and made into hay; five shillings for every acre of wheat; four shillings for every acre of oats; four shillings for every acre of pease; four shillings for every acre of beans; four shillings for every acre of rye; four shillings for every acre of reeds; four shillings for every acre of garden wall fruit; and four shillings for every acre of orchard, and in like proportion for every less quantity than an acre of the said respective species of tithes growing and renewing within the said parish, and the titheable places thereof; and fourpence for every acre of land fed and depastured by any cattle not employed to plough or pail within the said parish and the titheable places thereof, in lieu of the agistment tithe for the same cattle; sixpence for every milch cow kept within the said parish and the titheable places thereof, in lieu of all the tithes of the milk and the calves of the same cows; and twentypence for every sow kept within the said parish and titheable places thereof, in lieu of all the tithes of pigs brought forth from the said sows; which respective sums of money the rector of the said parish for the time being, for such of the said tithes as were great, and the vicar thereof for the time being, for such as were small tithes, or their farmers or deputies, for the time whereof the memory of man is not to the contrary, had received and had been accustomed to receive from the occupiers of any lands and tenements within the said parish and titheable places thereof in full satisfaction of all and singular the tithes of the said several and respective titheable matters and things; that relying on such annual payments, they had been induced to give a larger rent for the lands they held than they otherwise would have done; that within the said parish there were many more milch cows kept than the produce of the land was able to depasture; that therefore the occupiers of land therein were under a necessity of furnishing hay, turnips, potatoes, and other food for them; that the said commodities had respectively paid tithes; and that therefore it was unreasonable that the cattle eating the same should be subject to pay tithe in kind; that they had always been willing to pay to the plaintiff the aforesaid *modus*es in lieu of the said tithes; and also to pay the plaintiff tithes in kind of such titheable matters, &c. as were not covered by the said *modus*es.

The

The defendant *Bosley* said, that the lands he held within the said parish of *Stepney* were tithe free; for that, by letters patent, bearing date the fourteenth of *January*, in the first year of *Edward the Sixth*, the said king, in consideration of forty-seven shillings, granted and licensed to *John*, earl of *Warwick*, &c. and to *W. Cardie* and his wife, and the lines of their bodies, all that scite of his manor of *Poplar*, in *Poplar*, in *Middlesex*, with the appurtenances then late belonging to the monastery of *Graces*, near THE TOWER OF LONDON, and then dissolved, and also a field lying on the west side of the said manor containing twenty-two acres, and other fields, &c. as therein recited; that by a writing indorsed on the record of the said letters patent, it appeared, that afterwards the said *Earl* released to the said *Cardie* and his wife, and their heirs for ever, as appeared on the record in the exchequer, in the memorandums of the sixth year of *Queen Elizabeth*, amongst the returns of writs of *Trinity Term*; that therefore, in regard the lands he occupied in the parish of *Stepney* were situate within and part of the scite of the manor of *Poplar*, and formerly belonging to the said monastery of *Graces* they were exempt from the payment of any tithes whatsoever.

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BOSLEY.

That the particular lands which he held were tithe free as having been parcel of the monastery of *Graces*, and demesne lands of the manor of *Poplar*.

The defendant *Shirley* said, that before the year 1708, the great tithes of the parish and the rectory belonged to *Lord Montgomery*; that there was within the parish a vicarage endowed; that the vicar was entitled to all the small tithes therein, or to some *modus* in lieu thereof, except in those places which were exempted from tithes; that the great tithes were about the year 1708 purchased by *Brazen Nose College*; and that such several acts of parliament as were stated in the bill were duly made; that the plaintiff, as rector, was entitled to all great and small tithes, or to some *modus* in lieu thereof, except in places exempt therefrom; that he was also entitled to *Easter* offerings and other duties in the parish, except the small tithes and dues arising in the new parishes; that he occupied certain parcels of land situate in *Poplar Marsh*, in the hamlets of *Poplar* and *Blackwall*; and in the parish of *Stepney*; and that he had depastured barren cattle thereon; but that the plaintiff was not entitled to receive the tithe of such agistment; for that there had been, from time whereof the memory of man was not to the contrary, and then was an ancient and laudable custom, in that part of *Poplar Marsh* on which any barren cattle were in any year depastured, to pay, upon the twelfth of *August*, in every year, to the vicar of the parish, until the passing of the said acts of parliament, and since that time to the rector, or other person entitled to the tithes thereof, the sum of fourpence for every acre of land on which such barren and unprofitable cattle were kept, depastured, and agisted as aforesaid, in lieu of the tithe of the agistment thereof; that he had taken a lease of the said premises on the

The defendant *Shirley* denies, that the plaintiff is entitled to the small tithes in the new parishes;

and says, that there is a *modus* of 4d. an acre payable to the rector in lieu of agistment tithe of barren cattle depastured on *Poplar Marsh*.

BRAITHWAITE faith that the same was a good *modus*, and had given on that
against account a greater yearly rent than he otherwise would have
BOSLEY. done.

The defendant *Mellish* insists on the like *modus*. The defendant *Huet* and others say, the churchwardens of *Saint Matthew, Bethnal Green*, are entitled to the tithes of pease, beans, and potatoes in the said parish.

The defendant *Mellish* put in the like answer, and set up the aforesaid *modus* for his lands in *Poplar Marsh*.

The defendant *Huet* and others said, that in the 16. Geo. 2. c. 17. the churchwardens of the parish of *Saint Matthew Bethnal Green*, for the time being for several years before 1785, received, by compositions, the tithes of pease, beans, and potatoes growing within the parish of *Saint Matthew, Bethnal Green*, as being small tithes payable by the said act; that they had been respectively churchwardens in and since 1788, or overseers of the said parish; and being trustees thereof, they submitted whether they were not entitled to the tithes that from time to time grew in gardens, or in small plots in the fields.

The cause heard.

The plaintiff replied; and witnesses were examined on both sides; and upon hearing counsel for all parties; reading the evidence taken in the cause for both sides; and hearing the reply;

The rector refuses to try the *modus* as to *Poplar Marsh*.

The rector declined any issue respecting the *modus*es stated by the defendants *Shirley* and *Mellish* to be payable for the lands in their occupation, in lieu of tithes.

The bill, as to the tithe against *Mellish*, dismissed.

THE COURT therefore ordered the bill to be dismissed as against those defendants, with costs.

The bill, as to the tithes of sows, agistment, milk, and calves, dismissed.

THE COURT further ordered so much of the bill as prayed an account of the tithe of sows to be dismissed with costs; and so much as prayed an account against *W. Cotterell* and others for the tithes of agistment, of milk, and of calves, to be likewise dismissed with costs.

The churchwardens disclaim the tithes of pease and beans, and the rector admits their right to potatoes.

The defendant *A. Huet* and others, churchwardens of *Saint Matthew, Bethnal Green*, disclaimed any right to the tithes of pease and beans; and the plaintiffs admitted, that they were entitled to the tithes of potatoes; and it being suggested that the said defendants had received no tithes of pease and beans since the plaintiff became the rector of *Saint Dunstan's Stepney*;

The bill dismissed as against the churchwardens.

THE COURT further ordered the bill to be dismissed as against them, without cost.

The tithes of hay, corn, grain, pease, beans, reeds, and fruit, as claimed by the bill against the defendant *Bosley*, decreed with costs.

THE COURT further ordered the deputy remembrancer to take an account of all tithes of corn and grain, including pease and beans, and of the tithes of hay and reeds reaped, mowed,

cut,

cut, and taken from off the lands in the respective occupations of the defendant *W. Bosley* and others; and also an account of the tithes of gardens and orchards in the respective occupations of the said defendants, which had arisen and become due to the plaintiff; and ordered the deputy to tax the plaintiff his costs up to the hearing of the cause, as to so much of his bill as prayed the accounts directed to be taken as aforesaid; the said costs, when taxed, to be paid by *W. Bosley, &c.* to the plaintiff.

BRAITHWAITE
against
BUSLEY.

HORNE against THE DUKE OF BOLTON.

Hampshire, 16th December 1791.

MICH. TERM,
32. GEO. 3.

THE bill stated, that the plaintiffs, the president and scholars of *Magdalen College*, in *Oxford*, being seised to them and their successors, in right of the college, of the impropriate rectory of *Basing*, in the county of *Hants*, with the glebe lands and tithes thereto belonging in *Basing* and *Cowish*, in the said county, did, by indenture dated the sixth of *December 1783*, demise to the plaintiff *Grimwood*, rector of *Brandeston*, all that their parsonage of *Basing*, with all barns and edifices situated therein, and all glebe lands in the fields of *Basing*, together with the tithes of corn and hay in *Basing* and *Cowish*, to the said parsonage belonging, except the advocacy of *Basingstoke* and *Upnately*, and all other members of the same, and also except all timber trees then growing, &c. to hold for the term therein mentioned, &c.; that by virtue of such lease *Grimwood* was entitled to receive the tithes of corn, grain, hay, and all other great tithes whatsoever arising in the said parishes, hamlets, or vills of *Basing* and *Cowish*, and the titheable places thereof; that the defendant the *Duke of Bolton*, and the other defendants, his tenants, occupied lands in the said parishes, and had growing thereon corn, grain, and hay which they had reaped, cut, and taken away without setting out the tithes thereof, or making any satisfaction for the same. The bill therefore prayed, that the defendants might answer the premises; that the right of the president and scholars, as impropriators of the said rectory of *Basing*, might be established; and that an account might be taken of the said tithes, and the defendants ordered to pay what should be found due thereon.

The impropriator of the parish of *Basing*, in *Hampshire*, claims the great tithes of the parish of *Basing* and the hamlet of *Cowish*, in kind.

His Grace the *Duke of Bolton* said, that the president and scholars of *Magdalen College* were seised of the impropriate rectory of *Basing*, with the glebe lands and tithes thereunto belonging in *Basing* and in *Cowish*; and that they had made the said lease to *Grimwood*; but he denied, that he thereby became entitled to the tithes in kind of corn, grain, and hay, or to any other great tithes arising upon his lands; and said, that his

The defendant says, that he had paid all his great tithes, except of the lands called *the Old Park*, up to the time of filing the bill.

HORNE
against
THE DUKE OF
BOLTON.

that he was
bound to repair
the North Aisle,
and the South
Aisle of Basing
church;

and that the
lands called the
Old Park had, in
respect thereof,
been immemo-
rially exempted
from the pay-
ment of tithes;

that no great
tithes had ever
in fact been paid
for the same.

that the said im-
memorial usage
was in fact a va-
lid and legal mo-
dus;

but that the
written evi-
dences thereof
were lost on the
destruction of the
Castle of Basing,
during the civil
war.

ancestors had been the owners of the lands as described in his answer within the parish of *Basing* for some centuries past; that the same had come to him by the will of his brother, dated the fourth of *June* 1763; that he did not occupy any land within the vill of *Cowish*; that he held certain lands in the vill of *Basing*, part of the parish of *Basing*; that the tithes thereof as they became due, or a composition for the same, had been duly paid to the plaintiffs, or some of them, up to the filing of the bill; that he occupied other lands in the vill of *Basing*, as named in his answer; that the said land lay in *Hackwood Park*, in *the Old Park*, and elsewhere; that some part thereof had been mowed and made into hay; that the other part had been agisted; that the plaintiffs had been duly paid the tithes in respect thereof, or some composition for the same; that the premises occupied by the other defendants were part of *the Old Park*, formerly occupied by the defendant's ancestors; that no tithes in kind had been paid to the plaintiffs in respect of such lands; and he insisted, that they were not entitled to such tithes for the same. He admitted, that he had had yearly corn, grain, and grass growing thereon; and that no great tithes had been set out to the plaintiffs, in respect of the said lands; for that he and his ancestors, owners thereof, had for time immemorial been bound to repair and had repaired, at their own costs and charges, *the North Aisle* and *the South Aisle* in the chancel of the parish church of *Basing*, when the same was out of repair; that by reason thereof he and his ancestors, and others persons owners and occupiers of the lands and grounds, had immemorially been and were exempt from the payment of all great tithes whatsoever arising upon the said premises; that such premises had, from the like time, been exempt from the payment of all great tithes in kind, and had been accordingly so held and enjoyed by the defendant and his ancestors, and other owners thereof; that he and all future owners of the said land were bound and obliged in respect thereof to repair *the two Aisles* in the said chancel; and that otherwise the impropriate rector of the said church would be obliged to repair the same at his own expence: and he insisted, that such ancient usage to repair the said two aisles for the benefit of the impropriate rector amounted to and was in fact a valid and legal *modus* or composition in lieu of all great tithes in kind of the said lands. He further said, that the *Castle of Basing* was burnt down and destroyed, after a long siege, during THE CIVIL WARS in the reign of *Charles the First*; that many deeds and writings relating to the estates of his ancestors were then destroyed; that the ancient evidence which was, upon that occasion, unfortunately lost and destroyed, would more clearly have shewn the origin and nature of the exemption from the tithes insisted upon by plaintiffs.

The

The other defendants put in the like answer.

The plaintiff replied; and witnesses were examined on the part of the plaintiffs only; and upon hearing counsel on both sides; and reading the depositions taken in the cause, and the answer of *the Duke of Bolton*;

HORNE
against
THE DUKE OF
BOLTON.
The cause
heard.

THE COURT ordered, by consent of all parties, the deputy remembrancer to take an account of all the tithes of corn, grain, and hay reaped, mowed, and taken from off the lands of the defendants that were due, and had become due since the filing of the bill, with costs.

The great tithes
which had arisen
since the filing of
the bill decreed,
by consent, with
costs.

EYRE, *Chief Baron.*

HOTHAM, *Baron.*

PERRY, *Baron.*

THOMSON, *Baron.*

JOHNSON against SHIELD.

Rutlandshire, 31st January 1792.

HILARY TERM,
32. GEO. 3.

THE rector of *Martinthorpe*, in the county of *Rutland*, the church of which had been vacant fifty years previous to the plaintiff's institution in *January 1789*, claimed all tithes, both great and small, as well during the vacancy as since he had become rector thereof.

The rector of
Martinthorpe, in
Rutlandshire,
claims all tithes as
well during a va-
cancy of fifty
years as since
his induction.

The defendants said, that the plaintiff was, about the time mentioned in the bill, instituted into the said rectory; that there had been no rector, and that no person had claimed to be rector thereof since the year 1739; that there had not been, from time immemorial, in the said parish any parish church for publick worship, or the celebration of divine service, nor any church yard, parsonage house, or divine service performed therein; and that if the plaintiff established his right, as rector, they ought not to account for their tithes previous to his induction thereto.

The defendants
say, that there
never had been
any church in
Martinthorpe;
and that if the
plaintiff is enti-
tled to tithes they
ought not to pay
them during the
vacancy.

The plaintiffs replied; and witnesses were examined on both sides; and upon hearing counsel, and reading the defendant's answer; two acts extracted from two books of induction; the acts in the registry of the archdeacon of *Northampton*; five acts extracted from three books of institution acts remaining in the registry of the bishop of *Peterborough*; and eleven entries from a visitation book in the said registry;

The cause
heard.

THE COURT ordered the deputy to take an account of all the tithes from the time the plaintiff was inducted into the rectory, with costs.

The tithes de-
creed for the
whole time de-
manded, with
costs.

CLAVILL

HILARY TERM
32. GEO. 3.

CLAVILL *against* ORAM.

Wiltshire, 2d March 1792.

The impropriator of *Bradford*, in *Wiltshire*, claims the great tithes of the chapelry of *Atworth*, in the said parish, in kind.

THE bill stated, that the dean and chapter of *Bristol*, being impropriators of *Bradford*, with the parsonages, portions, tithes, lands, tenements, and hereditaments thereto belonging, in the county of *Wilts*, did, by indenture of lease dated the twelfth of *August* 1785, in consideration of eight thousand, four hundred pounds, demise to the plaintiff all that the rectory and parsonage of *Bradford*, with the appurtenances, and all manner of lands and tithes whatsoever, as in the said lease mentioned, for twenty-one years, at the yearly rent of fifty-seven pounds, six shillings, and sevenpence halfpenny; that the defendants had occupied lands lying in the parsonage or portion of *Atworth*, in the said parish, on which they had had corn, grain, hay, and other matters, the tithes in kind of which they had refused to pay. The bill therefore prayed an account; and payment of what should appear due thereon.

The defendants insist, that the lands they hold in the chapelry of *Atworth*, except as excepted in the answer, are tithe free, as having been parcel of the possessions of the monastery of *Shaftesbury*, and held in unity of possession by the abbot and convent with the rectory, &c.

The defendants insisted, that no tithes, or any *modus* in lieu thereof, was payable for their said lands in the portion, parsonage, and chapelry of *Atworth*; that the same were tithe free, except such lands as in their answer were excepted, for which they had duly paid their tithes, or made an adequate satisfaction to the plaintiff; for that the rectory of *Bradford* and the portion of *Atworth* were parcel of the possessions of the late monastery of *Shafton*, otherwise *Shaftesbury*, in the county of *Dorset*, before, until, and at the dissolution thereof; that the said monastery was one of the greater monasteries; that it was dissolved by 31. *Hen.* 8. and all its possessions vested in his majesty, with all the exemptions, privileges, and advantages thereto belonging, in as full and ample manner as the abbot and convent thereof had held and enjoyed the same; that all the parcels of lands as specified (except as were excepted) were, until and at the time of the dissolution of the monastery, from time whereof the memory of man was not to the contrary, free and discharged, and were and had been holden and enjoyed by the abbot and convent freed and discharged from all tithes, or the payment of all tithes whatsoever, by unity of possession, or other lawful ways and means; that in case it should appear that the rectory had not been immemorially part of the possessions of the monastery, the lands claimed to be tithe free had immemorially been parcel thereof until the dissolution of the said monastery, and had been immemorially held and enjoyed by the abbot and convent freed and discharged from all tithes; that by virtue of the said statute, all the parcels of land, described in the answer, became and were still exempt from tithes; that no tithe had, at any time within the memory of man, been paid for or in respect of any part of the said lands, except as aforesaid, or of any matter

or

or thing growing, arising, or increasing thereon: and they insisted, that the plaintiff was not entitled to any tithes in respect of any part of the said premises, except as aforesaid.

CLAVILL
against
GRAM.

The plaintiff replied; and witnesses were examined on the part of the defendants only; and upon hearing counsel on both sides; and reading, on behalf of the defendants, the depositions of several witnesses taken in the cause; the particular, from THE AUGMENTATION OFFICE, for a lease of certain premises in *Atworth*, in the county of *Wilts*, being part of the possessions of the dissolved monastery of *Shafton*, to *Lord Herbert*, in the year 1567; a particular for a grant of the manor of *Bradford*, being part of the possessions of the said monastery, to *Sir Francis Walsingham*, in the year 1575; a particular of a grant of the manor of *Bradford* to *Edward Bellingham, Esquire*, in the thirty-eighth year of the reign of *Henry the Eighth*; an extract out of *Doomsday*; and on full debate of the matter;

The cause
heard.

THE COURT directed the following issue, to wit,

“Whether all and singular the lands in the defendant’s answer mentioned, and claimed to be tithe free, were, from the time whereof the memory of man is not to the contrary, and until and at the time of the dissolution of the monastery of *Shafton*, otherwise *Shafton*, otherwise *Shaftebury*, in the county of *Dorset*, part and parcel of the possessions of the said monastery, and have been, for the like time whereof the memory of man is not to the contrary, and until the dissolution of the said monastery, held and enjoyed by the abbess and convent thereof, freed and discharged of and from the payment of the tithes of all corn, grain, hay, and other great and rectorial tithes; and whether, from the time of the said dissolution, the said lands have been held, and are now exempt and discharged of and from the said tithes of corn, grain, hay, and other great and rectorial tithes,”

An issue directed to try the exemption set up by the defendants.

The defendants in equity to be plaintiffs at law; to be tried by a special jury; and the judge to be at liberty to indorse, &c.

The issue was tried; and the jury found, that the said lands had been held in the manner described in the issue.

A verdict in favour of the exemption.

THE COURT, on the third of *June* 1793, upon hearing counsel for the defendants, and reading the decree and *posse*, ordered the bill to be dismissed, with costs both at law and in equity.

The bill dismissed with costs.

MACDONALD, *Chief Baron*.
HOTHAM, *Baron*.
PERRY, *Baron*.
THOMSON, *Baron*.

MARKHAM

HILARY TERM
32. GEO. 3.

MARKHAM *against* WILKINSON.

Yorkshire, 3d March 1793.

The vicar of *Carlton*, in *Yorkshire*, is entitled to the tithes of hay, milk, eggs, poultry, garden stuff, bees, honey, and all other tithes, except corn and grain, in kind.

S. C. Anstr.
Rep. 579.

See Markham
v. Laycock,
ante, page 373.

THE vicar of *Carlton*, in the county of *York*, claimed all tithes, except corn and grain, in kind.

The defendants answered as *quakers*; and said, that the plaintiff, they believed, was not entitled to the tithes in kind of grass made into hay; for that there was then, and for time immemorial had been, within the parish of *Carlton*, a custom, that the owners and occupiers of lands within the said parish and the titheable places thereof, should pay, and that they had paid yearly at *Midsummer*, or so soon after as demanded by the vicar of the parish, the sum of threepence for each and every ox-gang of land, containing sixteen acres of arable, meadow, and pasture, after the rate of seven yards to the pole or perch, so by them occupied within the said parish and the titheable places thereof, as and for an ancient *modus* or payment for, in lieu, and full satisfaction of the tithes of grass made into hay yearly arising, growing, or renewing, in or within the said ox-gang of land; that the same had been accepted as such. They further said, that an ox-gang of land within the said parish was the same throughout the whole parish; that it was a definite quantity of land, consisting of sixteen acres, after the rate of seven yards to the pole or perch; but that they could not tell when the ox-gang had its first institution; but supposed it to have been of very ancient origin, as several very ancient deeds relating to the lands in *Carlton* granted the lands there by the description of "an ox-gang" or "ox-gangs of land;" and that the terriers of the rights of the parish-church of *Carlton* from 1684 to this time were all of them expressive of the term "ox-gang:" and they insisted, that threepence by the ox-gang was payable to the vicar, being as a *modus* for the tithe of grass made into hay throughout the said parish, except from *the Hall Lands*. They further insisted, as to the tithe of milk claimed by the plaintiff, that there was then, and for time immemorial had been, within the said parish of *Carlton* and the titheable places thereof, an ancient and laudable custom, that the occupiers of lands within the parish should pay, and that they had paid yearly at *Easter*, or so soon after as demanded by the vicar, the sum of twopence for every milch cow or cows giving milk upon their respective lands and tenements within the said parish from *Easter* in the preceding year, called a *renewed cow*, and one penny for each and every cow in calf or ship cow, commonly called a *farr cow*, as and for ancient *moduses*, for, in lieu, and in full satisfaction of the tithe of milk renewing or increasing from such cows as aforesaid within the preceding year; that the same had been respectively accepted as such by the vicar of the said parish for the time being accordingly; and that they never knew that tithe

milk

milk was ever paid in kind, or any other satisfaction made for the same other than as aforesaid. They further said, as to the tithes of eggs and poultry, that for time immemorial the inhabitants resident within the said parish, who, for the time being, had kept hens which laid and brought forth eggs or chickens, or both, should pay, and that they had paid yearly at *Easter*, or so soon after as demanded by the vicar of the said parish, one penny, as and for an ancient *modus* for, in lieu, and full satisfaction for the tithes of such hens, eggs, and chickens, respectively; and that the same had been accepted as such. They further, as to the tithe of garden stuff, insisted upon an ancient *modus* of one penny at *Easter*, in lieu of the tithes of such garden stuff. As to the tithe of bees and honey, they also insisted, that the inhabitants resident in the parish, who for the time being kept any bees which produced honey, should pay at *Easter*, or so soon after as demanded by the vicar of the parish, one penny for, and in lieu, and full satisfaction for the tithes of such bees and honey respectively.

MARKHAM
against
WILKINSON.

The plaintiff replied; and witnesses were examined on the part of the plaintiff only; and upon hearing counsel on both sides, and the plaintiff's counsel stating the several proofs taken in the cause; and reading a decree of this court, dated the seventh of *February* 1791, *Markham v. Laycock*;

THE COURT ordered the deputy to take an account of the several titheable matters demanded by the bill.

The deputy made his report, dated the third of *March* 1794; and upon the twenty-third of *July* 1794, on hearing counsel on both sides, the report was confirmed with costs.

ATKINSON against FOLKES.

Norfolk, 12th *July* 1792.

TRIN. TERM,
32. GEO. 3.

THE bill stated, that the plaintiff, who had been some time minister of the *English* church at *Rotterdam*, in *Holland*, was, in *July* 1782, presented, by the defendant *Folkes*, to the rectory of *Hillington*, in the county of *Norfolk*, a benefice with cure; that he had ever since been the rector thereof, and was, as such, entitled to the tithes, both great and small, yearly arising therein; that the defendants had occupied lands therein, for the tithes of which they had paid the plaintiff to *Michaelmas Day*, old *style*, being the tenth of *October* 1785; that since that time they had had thereon wheat, barley, oats, rye, beans, pease, hay, cows, sheep, barren cattle, and turnips which they had either drawn or fed their cattle or sheep with, and also various other

The rector of *Hillington*, in *Norfolk*, claims the great and small tithes of the parish in kind from *Michaelmas* 1785; and states, that he had compounded with his parishioners before that time, on condition that they would per-

mit him to reside out of the parish; but that they had broken the condition, by suing him on the statute 21. Hen. 8. c. 13.; and that therefore he was entitled to take his tithes in kind.

matters,

ATKINSON
against
FOLKES.

matters, the tithes of which they had refused to pay, on a pretence that the plaintiff had, on the fourteenth day of *October* 1784, entered into an agreement with the inhabitants of the parish, that the tithes should be advanced from *Michaelmas* Day then last, thirty pounds, according to the proportions therein mentioned, for twenty-one years; and that proper agreements for that purpose should be made out and signed by all the parties concerned; that the said agreement was signed by the plaintiff and the defendants *Norman, Pickrell, and Barber*, the inhabitants of the said parish, on behalf of themselves and the rest of the inhabitants occupying lands therein; and that, by reason thereof, he was only entitled to receive a composition for the tithes, and had no right to take his tithes in kind; whereas the plaintiff charged, that such agreement had been entered into upon condition of his residence in the parish being dispensed with; but that the defendant *Pickrell*, on behalf of his majesty and himself, had commenced an action against him for *non-residence*, and had obtained a verdict therein for sixty pounds, being for six months non-residence; and that final judgment had been entered up thereon for such debt; and that he, the plaintiff, had paid the same. The plaintiff therefore insisted, that such agreement was void; and charged, that he was absent from *Hillington*, without serving the cure, for above eighty days in one year after he had signed the said agreement; that he was absent above eighty days in the year 1785 before the tenth of *October* in that year; that he had not any other benefice during all that time; that all or most of the titheable matters had by the defendants after the tenth of *October* arose after the time laid in the declaration as being the plaintiff's time of non-residence, and after he had been absent from the said parish above eighty days in one year; that on the second day of *April* 1785 he signed a notice for *Mr. Weatherhead* to quit the parsonage house on the tenth of *October* then next, in order that he might reside in the parish from that time; but by mistake, such notice not being delivered till the sixth of *April*, he could not get possession of the parsonage house till the tenth of *October* 1786; that therefore, under these circumstances, he was well entitled to demand and receive from the said defendants their tithes in kind from the tenth of *October* 1785. The bill therefore prayed, that an account might be taken, under the direction of this court, of the tithes of all the titheable matters and things had and taken by the defendants from their farms, lands, and gardens within the said parish after the tenth of *October* 1785, and of the value of such tithes; and that they might be decreed to pay to the plaintiff what should appear to be coming from them respectively on the taking such account.

The

The defendants admitted, that the plaintiff was presented to the rectory ; that he was, as rector, entitled to the tithes arising in the parish, or to a composition in lieu thereof ; that they had severally occupied farms therein ; and said, that for some time before he was instituted until the tenth of *October* 1784 inclusive, they, and all other the occupiers of lands in the rectory, were under an agreement to pay certain yearly sums in lieu of the tithes of their respective lands ; that they had accordingly paid the same until the tenth of *October* 1784 to the plaintiff ; that he having, before the tenth of *October* 1784, required to have the compositions theretofore paid to him raised, a meeting of the occupiers of lands was had ; that it was thereupon agreed, that such compositions should be advanced ; that a proper agreement should be made out and signed for that purpose by all parties concerned ; that such agreement was accordingly drawn up and signed by the plaintiff and the defendants ; that by such agreement, the several yearly sums of money payable to the plaintiff were increased, and were accepted as compositions for such tithes accordingly ; that they had had, since 1784, wheat, barley, other grain, clover grass, rye grass, and other grass ; that they had carried away all such corn and hay without setting out the tithes thereof ; that they had fed on their lands cows and sheep ; but they denied, that they had agisted or depastured any barren or unprofitable cattle for hire, except the defendant *Folkes*, who had made some profit by sale of part of his turnips, or by the agistment thereof ; that they had taken the whole of such titheable matters without setting out the tithes thereof, as they conceived they had a right to do by virtue of the said agreement, the plaintiff being precluded by it from demanding tithes in kind ; that notwithstanding which they had received a notice in writing from the plaintiff, on or about the thirtieth day of *March* 1786, purporting, that they should respectively quit and deliver up to him, on the tenth day of *October* then next, the quiet possession of all the tithes and titheable matters and other emoluments which they rented of him as rector, as he should from that time take such tithes in kind, or to that effect ; that the plaintiff had not till *October* or *November* 1786 been accustomed to reside in the parish, but had resided thereout, and kept a curate to do the duty thereof ; but they denied, that by the said agreement it was agreed that the plaintiff should not be compelled to residence in the parish, or should be permitted to reside out of the parish, or that such compositions from them and the other inhabitants of the parish in lieu of tithes were agreed to be taken upon condition that the plaintiff's residence in the said parish should be dispensed with ; and said, that he had agreed to accept such compositions because they were a full compensation for the said tithes. They further said, that the plaintiff was permitted to reside out of the parish until some time after he had given the defendants

ATKINSON
against
FOLKES.

The defendants state the deed of composition, and deny that it was entered into upon the condition stated in the bill ; and admit that one of them had received 60*l.* of the plaintiff on the statute of non-residence.

ATKINSON
against
FOLKES.

Such notice of his intention to take his tithes in kind, whereby he manifested his intention of breaking through the said agreement of the fourteenth of *October* 1784; but they denied, that it was understood that such composition should be paid or continued on the terms of the plaintiff's residence in the said parish being dispensed with. They also denied, that the plaintiff, after making the said agreement of the fourteenth of *October* 1784, at a subsequent meeting between him and the inhabitants of the said parish, had come to any new agreement respecting the said compositions, or any terms on which he should be entitled to accept the same, other than that it was agreed that the plaintiff should, in pursuance of the agreement, grant the said occupiers of land proper agreements for or leases of their tithes. They also denied, that it was agreed that in such agreement or lease there should be inserted any covenant therein for making void the same, or for giving the plaintiff a right to his tithes in kind in case he should be compelled to reside in the parish. But they admitted, that on the occasion of the said agreement of the fourteenth of *October* 1784 they acted as well on behalf of the rest of the inhabitants of the parish as of themselves; and that they approved of the terms of the said agreement, and submitted to be bound by it; and said, that in confirmation thereof, they had paid their respective compositions to the plaintiff according to the advancement contained therein.

The defendant *Pickrell* admitted, that he had commenced an action against the plaintiff for his non-residence, and recovered thereon as in the bill stated.

The cause
heard.

The plaintiff replied; and witnesses were examined on both sides; and upon hearing counsel for both parties;

The bill dismissed
with costs.

THE COURT ordered the bill to be dismissed with costs.

HOTHAM, *Baron*.
PERRY, *Baron*.
THOMSON, *Baron*.

EASTER TERM
33. GEO. 3.

ATTWOOD against HURRELL.

Norfolk, 29th April 1793.

The rector of the consolidated parishes of *Saxbington* and *Sharrington*, in *Norfolk*, is only entitled to 1d. a cow in those parts of the said parishes that were anciently within the parish of *Saxbington*, in lieu of tithe milk.

THE rector of the consolidated parishes of *Saxbington* and *Sharrington*, in the county of *Norfolk*, claimed the great and small tithes arising therein, particularly the whole milk milked every tenth morning for the tithe of the milk of the nine preceding mornings milkings, and the whole milk milked every tenth evening for the tithe of the nine preceding evenings milkings, from the tenth day of *October* 1790.

The

The defendants insisted on a *modus*, in those parts of the consolidated parishes that were anciently within the parish of *Saxbingham*, of one penny a milch cow, payable yearly on the twelfth day of *August*, commonly called *Old Lammas Day*, or so soon after as demanded, in lieu of the tithe of the milk of such cow throughout the year.

ATTWOOD
against
HURRELL.

The plaintiff replied ; and witnesses were examined on both sides ; and on hearing counsel ; and reading the depositions ; and, by consent, several terriers from the registry of the *Bishop of Norwich* belonging to the rectory and parish church of *Saxbingham* by the sea, in the county of *Norfolk* and diocese of *Norwich*, from the seventeenth of *May* 1627, and to the twenty-first of *June* 1763 ;

THE COURT ordered an issue to try, “ Whether there now is,
“ and hath been from time whereof the memory of man runneth
“ not to the contrary, an ancient and laudable custom within
“ those parts of the consolidated parishes of *Saxbingham* and
“ *Sharrington*, in the county of *Norfolk*, which anciently were
“ within the parish of *Saxbingham* and the titheable places
“ thereof, that every occupier of land for the time being, within
“ those parts of the said parishes, having a cow or cows yielding
“ milk, has yearly and every year, on the twelfth day of *August*,
“ commonly called *Old Lammas Day*, or so soon after as de-
“ manded, paid, and ought of right to pay, to the rector of the
“ said parish of *Saxbingham* before the consolidation thereof with
“ the said parish of *Sharrington*, and since the consolidation
“ thereof to the rectors of the said parishes for the time being,
“ the sum of one penny for and in lieu of the tithe of milk of
“ each cow throughout the year ; and whether such rector for
“ the time being accepted, and was of right bound to accept,
“ such payment of one penny for and in lieu of the tithe
“ of the milk of each of such cows throughout the year.”

The defendants in equity to be plaintiffs at law ; and the judge to be at liberty to indorse, &c.

The issue was tried by a special jury, and a verdict found for the plaintiffs at law.

THE COURT, on the ninth of *December* 1793, upon reading the decree and *poslea*, and hearing counsel on both sides, and on debate of the matter, ordered the bill to be dismissed, with costs both at law and in equity.

TRIN. TERM,
33. GEO. 3.

WAKE *against* RUSS.

Wiltshire, 6th July 1793.

The rector of *Great Knowle*, in *Wiltshire*, is only entitled to every tenth day's cheese for twenty weeks, to commence in fifteen days after *Holy Rood Day*, in lieu of the tithe of milk throughout the year; but he is entitled to the other tithes of the parish, both great and small, in kind.

S. C. Anst.
Rep. 295.

THE bill stated, that the plaintiff *Wake* was duly presented to the rectory of *Great Knowle*, in the county of *Wilts*; that he was entitled to all the tithes, great and small, yearly arising throughout the parish; that the defendant occupied *Leigh Farm*, and certain closes situate at *Upton*, in the said parish, part whereof was converted into garden ground; that he also occupied certain parcels of arable land and down lying dispersed in *the Common Fields* and *Downs* in the tithing of *Milton* and *Upton*; that he also occupied the right of feeding ten cows in *East Knoyle Pasture Ground* in respect of his said farm, and the right of feeding two other cows in the same piece of ground in respect to *Rooke's Lands*, yearly, from the thirteenth day of *May* to the thirtieth day of *November*; that he also rented a certain portion of *the glebe land* lying in *the Common Fields*, and also certain lands in the parish of *Cucklade*; that the plaintiff *Wake*, by indenture of lease dated the twenty-eighth of *February* 1780, demised to the plaintiff *Sheppard* the tithes, both great and small, yearly arising out of the said farm and lands for fourteen years; that the defendant had due notice thereof; that the defendant, for several years past, had reaped, mowed, and taken from off the said farm and lands wheat, barley, oats, rye, and other matters, the tithes of which he had taken to his own use, except some small part of his tithes of corn and hay; that he had also fed on his said lands cows and ewes, which had yielded him calves, milk, lambs, and wool, the tithes of all which he had taken away, except some small part of the tithes of wool and lambs; that he had also depastured on his said lands barren cattle or other stock for hire; that he had also bred several colts, kept many sows which brought him divers pigs, and had various other things, the tithes of which he had taken to his own use, except one pig, and some other small tithes. The bill then charged, that no *modus* had ever been paid in lieu of the tithes of milk; but that tithes of milk in kind, or some satisfaction in lieu thereof differing from the said *modus*, had, within the memory of man, been paid to the rector. The bill prayed an account and payment of the said tithes.

The defendant admitted, that *Wake* was rector; that he had demised the said tithes to *Sheppard*; that he, the defendant, occupied the farm and lands mentioned in the bill; that he had reaped and mowed therefrom wheat, barley, hay, clover, and other grass, but no pease or beans; but he denied, that he had taken them away without setting out the tithes thereof, or paying a full compensation for the same. He also admitted, that he had kept several cows, which yielded milk, and brought forth calves; and he said, that he had always been ready to pay to the plaintiffs the

tithe

WARR
against
RUSSELL

tithe of such calves, or a compensation in lieu thereof; but he admitted, that he had not set out or rendered to them the tithe of the milk in kind, as a *modus* was due in lieu thereof, and the plaintiff declined to accept the tithes of the calves, or to receive a satisfaction for the same: and he set up a *modus* of every tenth day's cheese for and during the space of twenty weeks in every year; the first of such cheeses to be paid in fifteen days after *Holy Rood Day* in every year, and to continue to be paid on every tenth day afterwards until the expiration of the said space of twenty weeks then next ensuing, in lieu of the tithes of milk; and said, that he had frequently offered such cheeses, and the full value thereof, which the plaintiff had refused to accept. He further said, that about the nineteenth day of *May 1705*, A TERRIER was made out and taken of all the tithes of the parish of *Knowle*, to wit, "The *Knole* terrier, made the nineteenth
 " day of *May 1705*, tithes of the parish: the tenth sheave, the
 " tenth pook of corn, the tenth cock of grass, the tenth fleece
 " of wool, the tenth lamb, the tenth calf, the tenth pig, the
 " tenth day's cheese for twenty weeks, the tenth apple, the tenth
 " lug of wood in the coppice (if sold), the tithe of eggs paid
 " *Good Friday*, the tenth day's skyme cheese for twenty weeks,
 " the first to begin fifteen days after *Holy Rood Day*, and to
 " continue every tenth day afterwards until twenty weeks are
 " expired. CHARLES TRIPPET, *Rector*. EDWARD WIGMORE,
 " WILLIAM OBORNE, *Churchwardens*."

The plaintiffs replied, &c. and witnesses were examined on both sides; and upon hearing counsel; and reading, on behalf of the plaintiffs, a terrier, dated the nineteenth of *May 1705*, brought from the bishop's court at *Salisbury*; another terrier, dated the tenth of *December 1677*, signed by *Richard Hill*, rector, and others; the depositions of several witnesses taken in the cause; the deposition of *William Burridge* to the former part of the seventh interrogatory, when an objection was taken to the latter part thereof by the defendant's counsel, and allowed by the Court; the answer; and upon reading several depositions of witnesses taken in the cause on the part of the defendant; a terrier, dated the nineteenth of *May 1705*, signed by the rector and churchwardens of *Knole*; and hearing the reply; the cause was ordered to stand over for the judgment of the Court.

THE COURT afterwards ordered the following issue to try,
 " Whether there is now, and hath been from time whereof
 " the memory of man runneth not to the contrary, an ancient
 " and laudable custom within the parish of *Great Knowle*, other-
 " wise *Bishop's Knowle*, otherwise *East Knole*, in the county of
 " *Wilts*, and the said titheable places thereof, that every occupier
 " of land within the said parish on which any cows yielding
 " milk had been fed, kept, or depastured, had paid, and of

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against
Russ.

“ right ought to pay, for and in lieu of the tithe of milk of each
“ of such cows, every tenth day’s cheese, for and during the
“ space of twenty weeks in any one year, the first of such
“ cheeses to be paid in fifteen days after *Holy Rood Day* in
“ every year, and to continue to be paid in every tenth day
“ afterwards until the expiration of the said twenty weeks then
“ next ensuing.”

The defendant in equity to be plaintiff at law ; and the judge to be at liberty to indorse, &c.

A trial was had, and the jury found a verdict in favour of the defendant *Russ*.

THE COURT, on the twenty-third of *June 1794*, ordered the deputy to take an account of what was due for the tithes of the agistment of sheep, of calves, of eggs, and of vegetables, from *Michaelmas 1785* to the filing of the bill ; and the bill to be dismissed as to every other species of tithes thereby demanded, with costs both at law and in this court.

TRIN. TERM,
33. GEO. 3.

HOWES against HAMMOND.

Suffolk, 19th June 1793.

The rector of *Thorndon*, in *Suffolk*, is only entitled to 18s. a-year in lieu of the great and small tithes arising in that part of *Lodge Farm* which lies in the said parish.

THE rector of *Thorndon*, in the county of *Suffolk*, claimed the great and small tithes arising therein in kind, particularly the tithes of milk of *Lodge Farm*, and the agistment tithes of saddle horses fed on the *Eight Acres Piece*, parcel of the said farm.

The defendant said, that he occupied *Risbaugle’s Lodge* situate in the said parish, and a farm and lands thereto belonging situate partly in the parish of *Risbaugle’s*, and partly in *Thorndon* ; that the said farm was usually called *Lodge Farm* ; that so much of *Lodge Farm* as was situate in *Thorndon* had immemorially consisted of the several lands in the answer mentioned, containing about two hundred and forty acres and one perch ; that the sum of eighteen shillings a-year had been immemorially payable by the occupier of the said lands, containing two hundred and forty acres, parcel of *Lodge Farm*, to the rector, on the first of *August* in each year, as a *modus* in lieu of all tithes, both great and small, arising on all the said lands ; that he had offered to pay the plaintiff the said yearly sum in lieu of the tithes of so much of the farm as was covered thereby, but which he had declined to accept ; that tithes in kind had never been paid for that part of the said farm ; and that he insisted on the said *modus* in bar of the plaintiff’s demand of tithes for that part of *Lodge Farm* which was in the parish of *Thorndon*.

The

The plaintiff replied, and witnesses were examined on the part of the defendant only; and upon hearing counsel; and reading the answer; the depositions; several receipts signed *Thomas Howes*; a copy of a bill and answer filed in the court of chancery the fifteenth of *February* 1769, by *T. Howes*, clerk, and *W. Shuckford*; an order made in the said cause, dated the third of *May* 1790; and hearing the reply;

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against
HAMMOND.

THE COURT ordered the bill, as to so much as claimed tithes in kind upon *Lodge Farm*, to be dismissed with costs.

THE COURT further ordered the deputy remembrancer to take an account of the tithes of milk admitted by the defendant in his answer to have been produced whilst his cows were not kept on *Lodge Farm*, and the calf which was dropped in the *Eight Acres Field*: the costs touching the account to be reserved.

The deputy made his report, dated the third of *February* 1794; and, on the twenty-sixth of *June* following, it was confirmed, and payment ordered of what remained due to the plaintiff.

SAWBRIDGE against BENTON.

MICH. TERM,
34. GEO. 3.

Essex, 14th December 1793.

THE rector of *Thundersley*, in the county of *Essex*, claimed the great and small tithes arising therein, particularly of *Thundersley Lodge Farm*, consisting of about two hundred and fifty-six acres of land.

The rector of *Thundersley*, in *Essex*, is only entitled to 20s. a year, in lieu of the tithes of *Thundersley Park*, including the lands called *Smith's End* and *Hadley End*.

S. C. 2. Anst.
Rep. 372.

The defendant admitted, that he occupied *Thundersley Lodge Farm*, and also certain lands called *Thundersley Park Grounds*, *Smith's End*, and *Hadley End*, containing in the whole, by estimation, two hundred and ninety-two acres, the tithes of which he had refused to pay; for that all the said lands were discharged from tithes by a composition real between the parson of the parish, the proprietor of the manor and park of *Thundersley*, and all other parties competent and necessary thereto, long before the reign of *Queen Elizabeth*; that by the said composition real an annual payment of twenty shillings was granted to the parson of the parish, to be paid to and received by him and his successors every year for ever, by half-yearly payments, at *Easter* and *Michaelmas*, out of the manor of *Thundersley* and the profits thereof, by the hands of the stewards, bailiffs, prepositors, and farmers of the said manor for the time being, in lieu and satisfaction of all and every the tithes which for ever should be growing, arising, renewing, and increasing in and upon all the said lands in the defendant's occupation; that he had never heard that any tithes whatsoever had been ever set out for, or paid, rendered, or satisfied, to or for the use

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against
BENTON.

of the parson of the said church after the making of the said *real composition*, save and except the said annual sum of twenty shillings, or that the parson did ever make or demand in respect of any tithes whatsoever arising from the said lands until the twenty-fourth day of *March* 1790, when he was served with a notice in writing by the plaintiff's solicitor to pay tithe in kind for all the land he held within the said parish.

The plaintiff replied, and witnesses were examined on the part of the defendant only; and upon hearing counsel, it was proposed by the Court, that an issue at law should be directed upon the *composition real* alledged by the defendant in his answer; but the same being declined by the counsel for the plaintiff, the Court further proceeded in the cause; and upon reading the depositions of witnesses, &c.; an *inspeximus* by letters patent in the nineteenth year of *Henry the Eighth*; letters patent of the forty-seventh year of *Edward the Third*, in the custody of the king's remembrancer of the exchequer; the ministers accounts, from the originals in the custody of the said king's remembrancer of the exchequer, of the profits of the manor of *Thundersley*, in the county of *Essex*, viz. several particulars of the account of *John Goldman*, prepositor of the manor of *Thundersley*, from the morrow of *Saint Michael the Archangel*, in the forty third, forty-seventh, forty-eighth, and forty ninth years of the reign of *Edward the Third* to the morrow of the feast of *Saint Michael* in each year, and in the fiftieth year from the morrow of *Saint Michael the Archangel*, in the said year of the reign of *Edward the Third*, to the twelfth day of *February* then next following, on which day it appeared, by a writ inrolled and in the custody of the king's remembrancer of the exchequer, that the said King *Edward* had granted the manor of *Thundersley* to one *Walter Whythers* for the term of his natural life; and by the said accounts it appeared, that the prepositor of the manor of *Thundersley* had paid to the rector of the said parish of *Thundersley* tithe in kind for the agistment of THE PARK of *Thundersley* previous to the date of the said letters patent of the forty-seventh year of *Edward the Third*; and that he, the said prepositor, had, from and after the date thereof, paid to the rector for the time being twenty shillings annually, which had been granted by the said letters patent of the forty-seventh year of *Edward the Third*; and on reading the originals of two writs of *liberate* from *Edward the Third*, directed to the prepositor of his manor of *Thundersley*, and of two several acquittances from the then rector of *Thundersley*, in the custody of the said king's remembrancer of the exchequer; an inrollment of the view and state of the accounts of the king's accountants in the reign of *Edward the Third* in the several years before stated, in the custody of the king's remembrancer; it appeared, that the account of the prepositor of the manor of *Thundersley* in each and every of the years before mentioned

mentioned had been audited and allowed at the exchequer by and before the treasurer and barons then and there sitting; and also on reading an inrollment of a writ directed by *Henry the Eighth* to the treasurer and barons of his exchequer, in the custody of the said king's remembrancer; and also several extracts from a taxation roll of the spiritualities and temporalties of the archdeaconry of *Essex* and *Colchester*, delivered into and now in the custody of the king's remembrancer of the exchequer, in the twenty-fifth year of the reign of *Edward the First*, whereby it appeared, that the *priory of Prittlewell*, within the said archdeaconry of *Essex*, was an alien priory; that the church of *Thundersley*, within the aforesaid archdeaconry, was chargeable with a pension of twenty-four shillings payable yearly to the prior of *Prittlewell*, and that the yearly value of the rectory of *Thundersley* was thirty shillings; and on reading the copy of a grant by letters patent of the first year of *Edward the Sixth*, whereby it appeared, that *Edward the Sixth* had granted the reversion in fee of the then disparked park of *Thundersley*, to the *Marquis of Northampton*, in the custody of the treasurer remembrancer of the exchequer; and on reading copies of two inquisitions *post mortem*, one taken in the twenty sixth year of the reign of *Queen Elizabeth*, and the other in the reign of *James the First*, whereby it appeared, that *Smith's End* and *Hadley End*, in the pleadings of this cause mentioned, were parcel of the late park of *Thundersley*, then disparked; and also on reading an extract from the printed rolls of parliament in 1377, and in the first year of the reign of *Richard the Second*, number seven, for the confirmation of certain grants and letters patent made by *Edward the Third*; and it being admitted, that no records or ecclesiastical muniments between the years 1372 and 1381 could be found in the registry of the diocese of the *Bishop of London*, notwithstanding the records and ecclesiastical muniments prior and subsequent to that interval, as well relating to the ecclesiastical property in question in this cause as to all other ecclesiastical matters in general within the said diocese, are there preserved, and easily to be found; and on full debate of the matter several days; the cause was ordered to stand over for the judgment of the Court.

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against
BENTON.

SIR ARCHIBALD MACDONALD, *Chief Baron*, this day delivered the opinion of the Court; and the bill was ordered to be dismissed, and the plaintiff to pay the defendant his costs,

MACDONALD, *Chief Baron*.
HOTHAM, *Baron*.
PERRY, *Baron*.
THOMSON, *Baron*.

ATKINS

HILARY TERM
34. GEO. 3.

ATKINS *against* HATTON and Others.

Cambridgeshire, 10th February 1794.

The rector of the parish of *Saint Michael*, in the town of *Longstanton*, in *Cambridgeshire*, claims the tithes of the lands called *Inham Field* and *the Park*; and states,
S. C. Anst.
Rep. 386.

that the town of *Longstanton* consists of the two adjoining parishes of *Saint Michael* and *All Saints*; that *All Saints* consists of a rectory and a vicarage; that *Sir T. Hatton* is the impropiator of the rectory, and owner of the estate called *Inham's* and *the Park*; that his tenant, the defendant *Prior*, had fed two flocks of sheep on *Longstanton Common*; that part of the said lands lay in *Saint Michael's*; but that the exact boundaries of the said parishes were not precisely ascertained;

THE plaintiff *Atkins* was rector of *Saint Michael's*, in the town of *Longstanton*, in the county of *Cambridge*; the defendant *Sir Thomas Hatton* was impropiator of the parish of *All Saints*, in the town of *Longstanton*; the defendant *Edward Prior* was tenant to him of part of the premises in question; the defendant *Sir John Hatton* was the heir at law, and resided abroad; and the defendant *Cockbutt* was the vicar of the parish of *All Saints*, in *Longstanton*. The bill stated, that *Atkins*, in *November 1782*, was duly presented and inducted into the rectory of the parish and parish church of *Saint Michael*, in the township of *Longstanton*, and had thereby become entitled to the great and small tithes arising therein, particularly in the district called *Inham's*, and the other lands called *the Park* of *Sir T. Hatton*; that the town of *Longstanton* consisted of the distinct parishes of *All Saints* and *Saint Michael's*; that the parish of *All Saints* is an impropriate rectory; and that the defendant *Sir Thomas Hatton* was entitled to the said rectory under a lease for years granted to him by the *Bishop of Ely*, and to all the great tithes arising therein; that *Sir Thomas Hatton* was also seised of certain lands, called *Inham's*, containing forty acres; of a mansion-house thereon; and of other lands called *the Park*, all situated in the parish of *Saint Michael*; that the defendant *Prior* had depastured two flocks of sheep and many other cattle on *the Commons* in *Longstanton*, and on the other inclosed lands in that township, of which some pay great tithes to the rector of *Saint Michael's*, and others to the vicar of *All Saints*; that the defendants had severally corn, grain, hay, and other things, growing upon their lands in *Saint Michael's*, the tithes of all which they had refused to pay. The bill then charged, that the lands of the said parishes were still ascertainable; that about sixty or seventy years ago the same had been several times perambulated; that although the neglect of latter times had rendered it difficult to trace the exact boundaries, yet it appeared from and by a record in prohibition in the common pleas of *Hilary Term*, in the sixth year of *Charles the First*, that *Sir Christopher Hatton*, knight of the bath, and the defendant's ancestor, was seised of the manor of *Colville*, in the parish of *Saint Michael's*; that he demised to *Richard Pike* and *Richard Petit* five hundred acres of arable land, one hundred acres of meadow land, and three hundred acres of pasture, parcel of *the Demesne Lands* of his said manor, situated within the parish of *Saint Michael's*; that the said lessees claimed to be discharged of the tithes of the wool and lambs of the sheep kept and yeaned upon the said manor and lands, and of all other tithes (except of corn and hay), in consideration of a certain annual payment of forty shillings in lieu thereof; that the suggestion for the said prohibition was supported by the usual affidavits

affidavits of the facts of such demise and such customary payment. The bill then further charged, that the whole of the said manor and lands then in the possession of the said *Christopher Hatton* descended and came to the said defendant; that *the Demesnes* or other lands belonging to the manor formerly in the possession of the said *Sir Christopher Hatton*, and since in the possession of the defendant, laid dispersed in different parts throughout the whole township of *Longstanton*; that the whole farm called *Inham's*, with the mansion-house and park, paddock, or inclosure thereunto adjoining, are situated within the limits of the parish of *Saint Michael's*, or the greater part thereof; that, as evidence thereof, all the servants hired by the said defendant, and serving in his family, had at all times been considered as belonging to the parish of *Saint Michael*, and had in many instances acquired settlements therein; that the male servants were registered for the militia as of the said parish; that *Inham's Farm*, with the mansion-house, &c. were formerly rated to the poor and other parochial rates and assessments of and for the said parish; that the said defendant, in rates of one shilling in the pound, had paid to the parish officers of the said parish one pound, sixteen shillings, and to the rector thereof three pounds, twelve shillings, in lieu of small tithes; that the said defendant had never paid any small tithes, or any sum of money or other consideration whatsoever to the vicar of *All Saints*, for or in respect of any lands adjoining to the mansion-house; and that the said tenements, lands, and mansion-house, had always been included within the perambulations of the parish of *Saint Michael's*. The bill further charged, that neither the said defendant, nor they whose estate he had, had ever received or enjoyed the tithes arising upon any lands or tenements within the parish of *Saint Michael's*; or that if they had, that the same had been by virtue of some lease from the rectors thereof, or by their permission, or by usurpation on the rights of the plaintiff and his predecessors rectors thereof, and not by any title in himself independent of the said plaintiff and his predecessors. The bill also charged, that the defendant had got into his possession a considerable part of the glebe and other lands belonging to the said rectors of *Saint Michael*, which he refused to discover. The bill therefore prayed, that *Sir Thomas Hatton* and *Edward Prior* might be decreed to pay all the tithes which had arisen upon the said lands and tenements; that *Sir Thomas Hatton* might be decreed to deliver up possession of the glebe and other lands which belonged to the rectory of *Saint Michael's* in his possession; that the plaintiff's right to the said tithes and glebe lands might be established; that a commission might issue to ascertain and set out the bounds of the parishes of *Saint Michael's* and *All Saints*, and the glebe lands belonging to *Saint Michael's* in the possession of *Sir Thomas Hatton* or his representatives or devisees, or that the ancient manor of *Colvill's*, or so much thereof, or of *the Demesne Lands* belonging thereto as should be found

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that the whole of the farm called *Inham's*, the mansion-house of the manor of *Stanton*, and the *Park*, were in *Saint Michael's*.

The bill therefore prays, that *Sir T. Hatton* may be decreed to pay the tithes thereof; and that a commission may issue to ascertain *the Glebe Lands* belonging to *Saint Michael's* in his possession; or that other lands of the same quantity may be set out from the demesne lands of the manor of *Colvill* in lieu thereof.

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found to be in the possession of *Sir Thomas Hatton*, or his representatives or devisees, might be declared to belong to the parish of *Saint Michael*, and be set out by him or them accordingly, or other lands of equal value in lieu thereof.

The defendants *Sir T. Hatton* and his tenant *Prior* insist, that they had paid the plaintiff all the tithes to which he is entitled; and state, that the boundaries of the respective parishes of *Saint Michael* and *All Saints* were unknown;

The defendants *Sir Thomas Hatton* and *Edward Prior* admitted, that the plaintiff was rector, and entitled to such tithes and portion of tithes as his predecessors had been entitled to; but denied, that he was entitled to the tithes arising within the whole district called *Inham's* or *the Park*; and insisted, that whatever tithes he was entitled to out of *Inham's Field*, or the other lands in their occupation, he had fully received. They said, that within *Longstanton* there was another rectory impropriate and parish church, called the parish of *All Saints*, distinct from the parish of *Saint Michael*; that *Sir Thomas Hatton* was seised of the said impropriate rectory of *All Saints*, with the tithes, portions of tithes, and dues to the same belonging; and that the boundaries of the said parishes could not be ascertained, as they lay contiguous to each other.

that *Inham's Field* extends into both the parishes;

The defendant *Sir Thomas Hatton* said, that he was seised of certain lands in *Inham's Field*; that the said field was situated in both parishes; but that he could not tell what parts thereof were situated in one, and what in the other parish.

that it was not discoverable how much lay in the one parish and how much in the other;

The defendant *Edward Prior* said, that he had been for several years past, and was then tenant to *Sir Thomas Hatton*; that he occupied about fifty acres of land in *Inham's Field*; but that he was unable to set forth what part thereof laid in *Saint Michael's*, and what part in *All Saints*.

that the mansion-house was in *All Saints* and the *Park* uncertain;

The defendant *Sir Thomas Hatton* said, that he was also seised of a mansion-house, in which he lived, situated in the parish of *All Saints*, and of certain lands being parcel of *the Park*; but that he was unable to set forth whether any part of the same was in the parish of *Saint Michael*. He admitted, that he and his tenants had had corn, grain, hay, and other tithes on the said lands; but insisted, that the plaintiff had received the whole of the tithes thereof; and that they had not withheld from the plaintiff any tithes whatsoever. He further said, that the plaintiff and the former rectors of *Saint Michael* had received the tithes which had arisen from several parcels of land supposed to be in *All Saints*; that he apprehended the same to be portions of tithes in *All Saints* belonging to the rector of *Saint Michael*; that he, *Sir Thomas Hatton*, and the former impropriators of *All Saints*, had received the tithes which had arisen from the several parcels of land supposed to be situated in the parish of *Saint Michael*; that they apprehended the same to be portions of tithes in *Saint Michael's* belonging to the impropriate rectory of *All Saints*;

that the rector of *Saint Michael's* and the impropriator of *All Saints* had immemorially received their respective portions of tithes from certain known parcels of land, without regarding whether they lay in the one parish or the other;

Saints

Saints and the rector of *Saint Michael's* to take their said *portion of tithes* from certain parcels of land lying promiscuously and dispersed throughout all parts of the town of *Longstanton*; that such usage and custom of taking such tithes had been invariably observed and acquiesced in both by the impropriator of *All Saint* and the rector of *Saint Michael's* from time immemorial; that the rector of *Saint Michael's* had immemorially taken tithes of lands which laid in common, and intermixed with lands tithing to the impropriator of *All Saints*; that the impropriator of *All Saints* had in like manner immemorially taken tithes of land lying in common, and intermixed with lands tithing to the rector of *Saint Michael's*; that the said tithes had been taken without any attention in which of the said parishes the said lands laid, they not being able to distinguish the boundaries of the said parishes.

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The defendants further said, that *Inham's Field* was a common field in the town of *Longstanton*; that the tithes thereof had been taken and received by the impropriator of *All Saints* and the rector of *Saint Michael's* by a division of the lands therein; that the said division was well known; and that the said manner of taking such tithes had been followed time out of mind by them and their predecessors.

that *Inham's Field* was a common field, the tithes of which had been received by divisions;

The defendant *Hatton* said, that some years ago there were two small cottages, the scite and ground of one of which contained an acre, and the other about half a rood; that they both paid rates to the parish of *Saint Michael*, but were some time since burnt down; that both scites were thrown into his lands; that the yearly value of both was not above two shillings and sixpence; that he, his family, and his ancestors had always used *All Saints* as their parish-church; that they had buried and christened there; but he admitted, that he was rated to the relief of the poor of *Saint Michael* in thirty-six pounds, but for what lands he was so rated he knew not.

that *Hatton* held the scites of two cottages which were in *Saint Michael's*;

The said defendants further said, that the manner of taking such *portion of tithes* between the rectors of the said two parishes had been always acquiesced in and acceded to, and never disputed before; that the plaintiff had full possession of all the said tithes and *portions of tithes* in as ample a manner as his predecessors had received the same.

that the mode of taking the aforesaid portion of tithes had always been acquiesced in;

The defendant *Sir Thomas Hatton* denied, that he had ever withheld from the plaintiff the tithes of any of the *Glebe Lands* belonging to *Saint Michael's*, or that he had been in possession of any such glebe lands; that the plaintiff enjoyed the same as his predecessors had done: and he insisted, that the plaintiff ought to continue to receive the same tithes and *portions of tithes* as he and his predecessors had always done.

that the impropriator of *All Saints* had no glebe lands belonging to *Saint Michael's*;

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that Prior had
fed two flocks of
sheep on Long-
stanton Common;
that he had paid
3l. 8s. a year as
a composition in
lieu of his small
tithes due to the
benefices of the vi-
car of *All*
Saints;

that there was a
right of inter-
commoning be-
tween the two
parishes per cause
de vicinage;

that they had
shewn the plain-
tiff deeds and
writings, by
which it ap-
peared, that the
owner of the
said mansion-
house

The defendant *Edward Prior* admitted, that he had at the usual times and seasons fed and depastured two flocks of sheep and many other cattle on the commons and common fields in *Longstanton*, and on the other inclosed lands in that township, part of which laid or were situated in *Saint Michael's* and part in *All Saints*; that some of such lands paid the great tithes to the rector of *Saint Michael*, and some to the impropriate rector of *All Saints*, but not to the vicar there; that he had paid to *Sir Thomas Hatton*, during the time he had occupied the said farms, the sum of three pounds, eight shillings a year, as a *modus* or composition for the small tithes payable by him as rector of the vicarage tithes of *All Saints*; that he had not paid any tithes, or other satisfaction in lieu thereof, for or in respect of such sheep and other cattle, to the rector of *Saint Michael*; that he conceived the vicar of *All Saints* was entitled to such tithes, or the said *modus* in lieu thereof, in regard his farms laid principally, if not wholly within the parish of *All Saints*; and with respect to his sheep and other cattle feeding and depasturing upon the commons and common fields of *Saint Michael's*, he said, that there had been for time immemorial, and still continued to be, a right of inter-commoning between the parishes by reason of their vicinage. He further said, that he held, as tenant to the *Hatton Family*, a farm, formerly two farms, situated in the township of *Longstanton*; one called the *Lordship Farm*, the other the *House Farm*; that the said consolidated farms consisted of the meadow or pasture land, the number of acres, and were situated in the several parishes as stated in his answer; that the plaintiff had taken in kind, or ought to have taken, his tithes of corn, grain, and hay, and other tithes which had become due, they having been duly set out for him.

The defendant *Dame Harriet Hatton*, widow of the late defendant *Sir Thomas*, and *J. D. Hatton*, an infant, by his mother and guardian, by their answer, admitted the facts as stated in his answer; and said, that she had found various deeds and writings relating to the matters in question; and that the plaintiff had had an inspection of the same, viz. a book which belonged to *Henry Gray*, clerk, formerly rector of *Saint Michael's* and also vicar of *All Saints*, and afterwards belonging to *Rowland Manlove*, clerk, in which book were various entries of them touching the profits and produce of the said rectory and vicarage; an indenture, dated about the first of *May*, in the twenty-second year of *Queen Elizabeth*, made between *Thomas Burgoyne* and *Alexander Bound* and *Charles Bill*, whereby, in consideration of five hundred pounds, he sold to them and their heirs all that the chief house situated in the parish of *Saint Michael's*, in *Longstanton*, reputed to be the mansion-house, and parcel of the manor of *Stanton*, otherwise *Colvill's*, together with all and singular courts, yards, houses of office, barns, &c.; another indenture, dated the

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the fourteenth of *December*, in the twenty-sixth year of *Queen Elizabeth*, and made between the said *Alexander Bound* and *Charles Bill* of the first part, *John Hatton* of the second part, and *Francis Shute* of the third part, whereby they granted, in consideration of nine hundred pounds to them, &c. the mansion-house, &c. for ever; and likewise by another indenture, dated the twenty-fourth of *May*, in the twenty-seventh year of *Queen Elizabeth*, made between *Thomas Burgoyne* of the first part, *John Hatton* of the second part, and *Francis Shute* of the third part, whereby he, for one hundred marks to him paid by the said *John Hatton*, gave and granted to the said *John Hatton*, *Charles Shute*, and their heirs all that his mansion called *Colvill's Manor*, with the appurtenances, &c. as described therein; an *inspeximus* of a record in the reign of *Queen Elizabeth*, whereby it appeared, that the said *Thomas Burgoyne* had been seised of and in one capital mansion-house, parcel of the manor of *Stanton*, otherwise *Colvill's*, and in one garden, two orchards, twenty acres of meadow, and sixteen acres of pasture, and of the liberty of foldage and sheep course for six hundred sheep, called *Master Burgoyne's Flock*, in *Longstanton* aforesaid, parcel of the manor aforesaid, occupied with the said capital messuage, &c. The defendants further said; that the said *Thomas Burgoyne*, and all those whose estate he had had of and in the said messuage, tenement, and liberty of foldage and sheep course, with the appurtenances, had paid, for the time whereof the memory of man was not to the contrary, to the rector of the said parish church of *Saint Michael*, in *Longstanton*, for the time being, or to his farmer, or to his deputy in the said rectory, or tithe-gatherer, every year, upon demand of the said rector, farmer, deputy, or tithe-gatherer, *forty shillings*, in full satisfaction and discharge, and in place of all the tithes of wool and lambs of and from the sheep course called *Master Burgoyne's Flock*, in *Longstanton* aforesaid, in any one year, and also of the tithes of apples, pears, herbage, and of all other tithes whatsoever (tithes of grain and hay excepted), upon the tenements aforesaid, with the appurtenances, or in, out of, or upon any part thereof, in any one year, coming, increasing, renewing, or in any other manner happening, as a *modus* or *real composition*: and they insisted upon the *modus*, and said, that it appeared by the receipts of the plaintiff, that he had received the rent of the said rectory up to *Lady Day 1786*; and therefore, that no sum was due to him in respect of the said annual payment of *forty shillings* at the time of filing his bill. They also said, that they believed, that the said payment was annually made at sheep shearing time.

had the liberty of depasturing a flock of 600 sheep, called *Master Burgoyne's Flock* on the common every year, paying forty shillings to the rector of *Saint Michael's*, in lieu of the tithes of the said pasturage and of all other tithes, except corn, grain, and hay.

The defendant *T. D. Hatton* said, that he was an infant, and a stranger to all the matters and things in the said bill stated; and humbly hoped the court would preserve his rights and interest in the premises.

The

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against
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AND OTHERS.
The vicar of *All
Saints* answers.

The defendant *Thomas Cocksbutt* admitted, that the plaintiff had been duly presented to the rectory of *Saint Michael*; but whether, as rector thereof, he was entitled to all the great and small tithes arising therein, and particularly of all the tithes, whether great or small, arising in *Inham's Farm*, and other lands part of *the Park*, he said, that he knew not, save that he believed that the said plaintiff, as rector, was entitled to all such tithes as his predecessors had been entitled to. He further said, that there were two distinct parishes in *Longstanton*; that the parish of *All Saints* was an impropriate rectory; that the said *John Hatton*, in his life-time, was seised of the same under a lease granted to him by the *Bishop of Ely*; and that he, as impropriator thereof, had been entitled to all the great tithes thereof. He further said, that in *October 1787*, he, *Thomas Cocksbutt*, was collated into the vicarage of *All Saints*, and had, as such, become entitled to the annual sum of *twenty pounds*, payable by the impropriator thereof, and to such small tithes arising therein as the former vicars thereof had been accustomed to receive; that from the time of his being collated thereto, *the Hatton family* had held as tenants to him, at a certain yearly rent, *the glebe* and tithes belonging to him as vicar.

The bishop of
Ely answers.

The defendant *the Bishop of Ely* said, that it might be true as to the said plaintiff's induction into the parish; that there were in the township of *Longstanton* two distinct parishes; and that the parish of *All Saints* was an impropriate rectory, and held by the defendant *Hatton*; but that he knew not of any other matters in the said bill mentioned.

The cause
heard.

The plaintiff replied; the defendants rejoined; and witnesses were examined in the country on the part of the plaintiff and *the Hatton family*; and the cause came on to be heard; and on hearing counsel several days for all parties; and reading the following evidence for the plaintiff, viz. the several answers of *Sir Thomas Hatton* and *Edward Prior*, and of *Dame Harriet Hatton*; the following exhibits, viz. an indenture, dated the first of *May*, in the twenty-second year of *Queen Elizabeth*, made between *Thomas Burgoyne* of the first part, and *Alexander Bound* and *Charles Bill* of the second part; an indenture, dated the twenty-fourth of *May*, in the twenty-sixth year of the said queen, and made between the said *Alexander Bound* and *Charles Bill* of the first part, *John Hatton* of the second part, and *Francis Shute* of the third part; an indenture, dated the twenty-fourth of *May*, in the twenty-seventh year of the said queen, and made between the said *Thomas Burgoyne* of the first part, *John Hatton* of the second part, and *Francis Shute* of the third part; a copy of a record of suggestion and award of prohibition relative to the tithes in *Stanton Saint Michael*, in a cause wherein *Henry Gort* was plaintiff, and *Richard Pike* and *Richard Petit* were defendants; and

and on producing a parchment-writing from *Trinity College*, in the university of *Cambridge*, and proved by *Mr. Serjeant Le Blanc*, and which said exhibit was proposed to be read, but objected to by the defendants, and the objection allowed; and upon reading a paper-writing, purporting to be an account of small tithes; and upon reading the following evidence on behalf of the defendants, viz. an office copy of a record in the thirty-fourth year of the reign of *Queen Elizabeth*, in prohibition, in a cause wherein *Richard Phypers* was plaintiff against *William Howgrave*, defendant; a book kept by *Mr. Gray* and *Mr. Manlove*, the former rectors of the said parish of *Saint Michael*, of payments made to them by the *Hatton* family and others from 1652 to 1670; a memorandum in the said book, signed *Thomas Waterland*, and *Price Phippers*; several receipts from the said *Thomas Waterland* to *Sir Thomas Hatton*, from the eighteenth of *May* 1753 to the second of *June* 1760; several depositions of witnesses taken in the cause; and hearing counsel for all parties; the cause was ordered to stand over for the judgment of the Court.

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against
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Evidence reject-
ed.

SIR ARCHIBALD MACDONALD, *Chief Baron*, delivered the same this day accordingly; and the bill was dismissed as against the *Bishop of Ely*, *Thomas Cockbutt*, and *Sir John Hatton*, with costs.

The judgment
of the Court.

THE COURT further ordered, that so much of the bill as prayed that *Sir Thomas Hatton* might deliver possession of the glebe and other lands belonging to the rectory of *Saint Michael's* as should be found to be in his possession; that the plaintiff's common law right to the tithes of the lands in the occupation of the defendants, and to the glebe lands in their possession, or in the possession of any other person holding under them, might be declared and established; and that a commission may issue to ascertain, &c; be also dismissed with costs.

The bill, so far,
as it prayed a
commission re-
specting the
glebe lands, dis-
missed with
costs.

THE COURT further ordered a trial at law upon the following issues, to wit:

Issues directed
to try,

FIRST, "Whether the said *Thomas Burgoyne*, and all those whose estate he had of and in one capital mansion-house, parcel of the manor of *Stanton*, otherwise *Colvill's*, and in one garden, two orchards, twenty-one acres of meadow, and sixteen acres of pasture, and of the liberty of foldage and sheep course for six hundred sheep, called *Master Burgoyne's Flock*, in *Long Stanton* aforesaid, did pay, for time whereof the memory of man was not to the contrary, to the rector of the parish-church of *Saint Michael's*, in *Long Stanton*, for the time being, or to his farmers, or to his deputy in the said rectory, or tithe-gatherer, every year, upon demand of the said rector, farmer, deputy, or tithe-gatherer, the sum of forty shillings, in full satisfaction and discharge, and in place of all the tithes of wool and lambs of and from the sheep course, called *Master Bur-*

1st, The issues
respecting *Master
Burgoyne's Flock*.

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“ *goyné's Flock*, in *Longstanton* aforesaid, in any one year ; and
“ also of the tithes of apples, pears, herbage, and of all other
“ tithes whatsoever (the tithes of grain and hay excepted) upon
“ the tenements aforesaid, with the appurtenances, in, out of,
“ or upon any part thereof, in any one year coming, increasing,
“ renewing, or in any other manner happening, as a *modus* or
“ real composition.”

adly, Whether
the plaintiff is
entitled to the
tithes of *Inham*
Field.

SECONDLY, “ Whether the said plaintiff is entitled, in right of
“ his rectory of *Saint Michael's*, in *Longstanton*, to the tithes
“ arising, renewing, or increasing, within the district called
“ *Inham's Field*, and now or late in the occupation of the de-
“ fendant *Susannah Prior*, widow, late belonging to *Sir Thomas*
“ *Hatton*, or to some part thereof.”

3dly, Whether
the scites of the
two cottages are
in *Saint Mi-
chael's*.

THIRDLY, “ Whether the scites of two small cottages (the
“ scite and ground of one of which contained about an acre,
“ and the scite and ground of the other contained about half-a-
“ rood, and now in the possession of the defendant *Dame Harriet*
“ *Hatton*, widow), or one or either of them, is or are in the said
“ parish of *Saint Michael's* aforesaid, or not.”

The defendants
in equity to be
plaintiff, in the
first, and *vice*
versa in the
other issues.

The defendants in equity to be plaintiffs at law in the first
issue ; and in the second and third issues, the plaintiff in equity
to be plaintiff at law ; to be tried by a special jury ; the Judge to
indorse, &c. ; and the cause to be further heard upon the equity
reserved.

The *modus* as to
Bergeyn's Flock
admitted.

The plaintiff's counsel, on the twenty-seventh of *February*
1795, prayed, that THE FIRST ISSUE might be taken as insisted
on by the defendants in their answer ; and, *the Hattons* con-
senting thereto, it was thereupon ordered as prayed ;

The scites of the
two cottages ad-
mitted to be in
Saint Michael's.

The defendants counsel, on the twenty-seventh of *February*
1795, prayed, that THE THIRD ISSUE may be taken as insisted
upon by the bill, and not admitted by the defendant's answer ;
and the plaintiff consenting thereto, it was ordered as prayed.

The jury find,
that only five
leys of land,
part of *Inham's*
Field, are tith-
able to the rec-
tor of *Saint Mi-
chael's*.

The second issue was tried, and the jury found, “ That as to
“ five leys of land, part of the lands in *Inham's Field*, the plaintiff
“ *James Atkins* was and is entitled, in right of his rectory of
“ *Saint Michael's*, in *Longstanton*, to the tithes arising, renewing,
“ and increasing, from, upon, and within the said five leys of
“ land, parcel of the said lands in *Inham's Field*, within the
“ township of *Longstanton*, late the property of *Sir Thomas*
“ *Hatton*, in the occupation of the defendant *Prior*.” And as to
the residue of the lands, other parcel of the said lands in *Inham's*
Field, the jury found, “ That *James Atkins* was not, nor was he
“ in right of his rectory of *Saint Michael's*, in *Longstanton*, enti-
“ tled to the tithes arising from, upon, and within the residue
“ of the lands, other parcel of the said lands in *Inham's* aforesaid,
“ within

“ within the said township, late the property of *Sir Thomas*
 “ *Hatton*, as being in the occupation of the said *Susannah*
 “ *Prior*.”

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 against
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LORD CHIEF JUSTICE EYRE, before whom the cause was tried, signed the following certificate: “ I certify, that it appeared in evidence on the trial of the issue before stated, that the defendant *Susannah Prior* was in the occupation of divers large quantities of land in the field called *Inham Field*, which land was late the property of *Sir Thomas Hatton*, deceased, and the tithes of which land the plaintiff *James Atkins* claimed to be entitled to; but that the jury found he was entitled, in right of his said rectory of *Saint Michael's*, in *Longstanton*, to the tithes arising, renewing, or increasing, within a small part only of the said lands, viz. five leys of land in *Spallinash Furlong*, in *Inham's*; which tithes, it appeared in evidence, had never been withheld from him; and that he had always been, and then was, in the actual receipt of them.” That

The Judge indorses the *possession*, that the tithes of the five leys of land had not been withheld from the plaintiff.

“ As to the issue respecting the scite of the two small cottages, it was thought advisable, on the part of the *Hatton family*, to consent, that the same should be likewise taken *pro confesso*, as the trying of the same would have cost as much as the inheritance of the land was worth, and although it was admitted, that the scite of the two cottages were in the parish of *Saint Michael*, yet it by no means followed that *James Atkins* the plaintiff was entitled to the tithes thereof.”

That though the two scites were in *Saint Michael's*, the plaintiff might not be entitled to the tithes.

On the first of *February* 1796, counsel were heard on behalf of the defendants; and on debate of the matter;

THE COURT ordered the bill to be dismissed with costs, excepting only as to THE THIRD ISSUE, as to which the Court directed no costs on either side. The bill dismissed.

MACDONALD, *Chief Baron*.
 HOTHAM, *Baron*.
 THOMSON, *Baron*.

ATKINS against LORD WILLOUGHBY DE BROKE.

HILARY TERM
 34. GEO. 3.

Cambridgeshire, 10th *February* 1794.

THE plaintiff was rector of *Saint Michael's*, in the town of *Longstanton*, in the county of *Cambridge*; the defendant, *Lord Willoughby de Broke*, was seised of divers lands and hereditaments in the said town; the defendant *Sir T. Hatton* was improPRIATOR of the parish of *All Saints*, in the said town; the defendant *James Goodchap* was tenant to *Lord Willoughby de Broke*; and the defendant *Cockbutt* was vicar of the parish of

The rector of *Saint Michael's*, in the town of *Longstanton*, in *Cambridgeshire*, claims the great and small tithes of the lands in the said parish

belonging to *Lord Willoughby de Broke*, from *Lady Day* 1793.—S. C. Anst. Rep. 397.

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and states, that there were amongst the said lands certain parcels of the glebe lands belonging to the rectory of Saint Michael's; that the occupier of the said lands was bound by the custom of the parish to give notice of setting out the tithes.

The bill therefore prayed an account;

that the pretended *modus* of 4l a-year might be set aside;

All Saints aforesaid. The bill stated, that the plaintiff was, in November 1782, instituted and inducted into the rectory of Saint Michael's; that he had demised the said tithes and glebe lands of the rectory to Sir T. Hatton until the Lady Day preceding the filing of the bill; that from that time the plaintiff had become entitled to the glebe lands and tithes; that within the town of Longstanton there are the two distinct parishes of Saint Michael's, otherwise Stanton Saint Michael's, and All Saints; that for some years past, the perambulations of the said parishes not having been regularly made, some confusion and uncertainty had arisen respecting the boundaries thereof; that the defendant James Goodcheap, from Lady Day last, had enjoyed lands and tenements in the parish of Saint Michael's, as tenant both to Lord W. de Broke and Sir Thomas Hatton, and had had corn, grain, and other matters thereon, the tithes of which he had refused to account for, or to discover where his said lands lay; that most of them were situated within the parish of Saint Michael's; that Sir Thomas Hatton had received, until Lady Day last, the annual payment of four pounds, in lieu of Goodcheap's tithes; but that he had refused to tell for what lands the same had been paid; that it appeared from a book kept by Henry Gray, a former rector of Saint Michael's, that Lord W. de Broke's lands in Longstanton had paid tithes in kind of wool, lambs and all other small tithes, from the year 1654 to 1662, and different compositions in lieu of such small tithes, for several years afterwards; and that such book was a true memorial of the fact of such payment. The bill further charged, that several parcels of the glebe lands belonging to Saint Michael's laid interspersed, and without any boundaries, among the lands of the said defendants; that particularly certain pieces were situated in Michael's Field and on Yellow Hill, or some parts thereof; that others lay in Adam's Green, and in the north east corner of Little Moor; that certain other parcels of glebe abutted on the New Close and on the road leading to Pudwell Head; and also the leys of grass called Poswell Leys and Nettle Bush Leys, or some part thereof; and an allotment of land in Flymer's Leys. The bill further charged, that within the parish of Saint Michael's there was an ancient and laudable custom, that all and every the occupiers and owners of lands and tenements within the parish previous to the setting out of tithes of all or any of the titheable matters arising, growing, or renewing within the same, should give reasonable notice to the rector of the parish, or his bailiff or tithe-gatherer, at what time or times they intended to set out their said several tithes. The bill therefore prayed, that an account might be taken of the tithes during the time aforesaid; that Lord Wiloughby de Broke and James Goodcheap might be decreed to pay what should appear to be due thereon; that the pretended customary payment of four pounds *per annum* in lieu of such tithes and of such lands as the same was ascertained

to extend to, might be set aside ; that the right of the plaintiff to all the tithes, of what nature or kind soever, arising, growing, or renewing within the parish of *Saint Michael's*, might be established ; that all such *glebe land* as might be found to be in the possession of *Lord W. de Broke* or his tenant might be delivered up to the plaintiff ; that a commission might issue to ascertain and settle the same, and to ascertain and settle the boundaries of the two parishes ; and that the custom of giving notice of setting out the tithes might be declared and established.

glebe lands ; and that the custom of giving notice might be established.

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against
LORD
WILLOUGHBY
DE BROKE.
that his common
law right to the
tithes might be
established ;
that a commis-
sion might issue
to reclaim the

The defendant *Lord Willoughby de Broke* said, that within the town of *Longstanton* there was the rectory impropriate and parish of *All Saints*, distinct from the parish of *Saint Michael's* ; that they lay contiguous to each other ; that the perambulations thereof had not been regularly made ; that confusion and uncertainty had arisen respecting the boundaries thereof ; that the rector of *Saint Michael* had demised his tithes to the impropriator of *All Saints* ; that the defendant *Goodcheap* had, ever since *Lady Day 1786*, occupied of him, as tenant, meadow, pasture, and ley lands ; that part was in the parish of *Saint Michael* and other part in *All Saints* ; but that he could not set forth what parts were situated in *Saint Michael's* and what in *All Saints*, the boundaries having been so confounded ; but that no vicarial tithes in kind had been paid for the said lands within memory ; that a payment or composition of four pounds a-year had been paid by all the owners or occupiers of the defendant's lands in *Longstanton*, in the occupation of *Goodcheap*, to the rector of *Saint Michael's*, in lieu of all small tithes growing thereon ; that such payment had been usually made on the third day of *May* in every year : and he insisted, that the lands belonging to him in the said defendant's occupation had been and was an ancient farm ; and that, for time whereof the memory of man is not to the contrary, there had been paid, and of right ought to be paid, to the rector of the said parish, his lessees or agents, the sum of four pounds yearly, on the third day of *May* in every year, in lieu and full satisfaction of all vicarial or small tithes arising upon such lands ; but he said, that he could not positively set forth whether such payment was an immemorial payment by way of a *modus* or composition in lieu of such small tithes or not, although he insisted upon the same as such. He further said, that *Sir Thomas Hatton* was seised of the impropriate rectory of *All Saints*, and was entitled to such tithes arising therein as his predecessors had taken ; but that as the boundaries of the said parishes had been confused, some difficulty had arisen as to the tithes to which he was entitled ; that therefore it had been the custom for the impropriator of *All Saints* and the rector of *Saint Michael* to receive their portions of rectorial tithes from certain parcels of land lying promiscuously and dispersed

The defendant
insisted, that a
modus of 4l. a-
year was paya-
ble in lieu of the
small tithes of
the said lands ;
and that he had
paid all his great
tithes ;

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through all parts of *Longstanton* ; that the said lands were perfectly known ; but that it could not be distinguished in which of the said parishes they laid ; that the custom of taking of such tithe had been invariably observed and acquiesced in both the said parishes by the said rectors ; and that they had taken tithes of lands so intermixed with lands which had paid tithes to each other. He further said, that he did not know whether there was any *glebe land* belonging to the rectory of *Saint Michael's* lying interspersed and without boundaries among his lands, or that there was within the said parish such custom of giving notice of setting out tithes as stated in the bill, although he believed that some notice ought to be given ; and that he knew not whether the boundaries of the said parishes were now ascertainable or not. He further said, that his estate in *Longstanton* was an ancient estate ; that the same had not been increased by purchase or diminished by sale during the memory of man ; that he was seised thereof in tail only, and not in fee simple, by virtue of an act of parliament passed in the twenty-seventh year of *King Henry the Eighth* ; and that by the said act he and his ancestors had been disabled from aliening the same, except for jointure ; that the defendant *Goodcheap* occupied all his lands in *Longstanton* ; that the same had formerly been divided into two farms, though now occupied as one ; that the number of acres composing the same had at all times, within the memory of man, been the same, as entailed by the said act of parliament, excepting that it might have been altered by exchanges : and he insisted, that, for time whereof the memory of man is not to the contrary, there had been paid, and of right ought to be paid, to the rector of the said parish of *Saint Michael's* for the time being, his lessees or farmers, by the owners or occupiers of such ancient farm or farms belonging to this defendant as aforesaid, four pounds yearly, on the third day of *May* in every year, or as soon after as lawfully demanded, for or in lieu of all tithes whatsoever of all titheable matters and things (except corn, grain and hay) yearly arising, growing, renewing, or increasing in or upon such ancient farm or farms as aforesaid.

that he had tendered the *modus*, and that the plaintiff had refused to accept it ;

The defendant *James Goodcheap* admitted, that the plaintiff was rector ; that he had occupied, as tenant to *Lord W. de Broke*, certain farms and lands in the parish ; and spoke to the same effect as to those lands ; and insisted on the said *modus*. He denied, that he had refused to set out his rectorial tithes of the said farm ; but admitted, that he had not set out his vicarial tithes, apprehending that the *modus* covered the same ; and that he had tendered the *modus* annually on the said day to the plaintiff ; but that he had refused to accept of it. He further said, that *Sir Thomas Hatton* was seised of or entitled to the impropriate rectory of *All Saints* ; that the boundaries of the said parish had been confused, and some difficulty had arisen as to the

tithes to which the plaintiff was entitled to: and he spoke to the same purport as *Lord W. de Broke* had done. He further said, that *Cockbutt* was vicar of *All Saints*; that from *Lady Day 1786* he had occupied lands in *Long Stanton*, as tenant to *Sir Thomas Hatton*; but could not set forth what particular lands so occupied by him were the lands late belonging to him, the same having been for a great number of years occupied by the same persons who had occupied the said lands of *Lord W. de Broke*; but that part were situated in the parish of *Saint Michael's* and part in *All Saints*. He further said, that he had had on the said lands corn, grain, and hay; but denied, that he had refused or neglected to set out the tithes of the same to the rectors of the said parishes.

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DE BRIDGE.

The defendant *Sir Thomas Hatton* admitted, that the plaintiff was, as rector of *Saint Michael's*, entitled to the glebe land and tithes therein which his predecessors had been entitled to, or to such portion of tithes; and said, that within *Long Stanton* there is another rectory, called the parish of *All Saints*; that it was a distinct parish from *Saint Michael's*; that they lay contiguous to each other; that he was impropriator of *All Saints*; that the boundaries of the said parishes could not be ascertained; that he claimed such tithes of the lands so occupied by *Goodcheap* as he and his predecessors the former rector of *All Saints* had received; and that the plaintiff had not any right thereto.

that *Sir T. Hatton* was the impropriator of *All Saints*, &c.

The defendant *Dame Harriet Hatton*, widow, and *J. D. Hatton*, an infant, by his mother and guardian, admitted the facts as stated in her husband's answer; and said, that she knew not whether the bounds of the parishes aforesaid were ascertainable; that she was a stranger to the boundary line; that *Goodcheap* occupied lands as tenant to the *Hatton family*; but whether the same were situated within *Saint Michael's* parish she knew not; and she stated the four pounds *modus*; but said, that she was ignorant whether it covered those lands or not.

that the boundaries of the parishes were uncertain;

The defendant *T. D. Hatton* said, he was an infant, and a stranger to all the matters and things in the said bills stated; and humbly hoped this honourable court would preserve his rights and interests in the premises.

The defendant *T. Hatton* answers as an infant.

The defendant *T. Cockbutt* said, the plaintiff was rector, and entitled to the same glebe lands and tithes as his predecessors had been entitled to; that within the town of *Long Stanton* there were two distinct parishes; but whether the boundaries were ascertainable or not he could not tell; that in *October 1787* he was collated to the vicarage of *All Saints*; that he was then vicar thereof; that, as such, he was entitled to the annual sum of twenty pounds payable by the impropriator of the said rectory, and to such small tithes arising therein as former vicars had been accustomed to receive; that from the time of his being collated,

The vicar of *All Saints* says, that he had let such small tithes as he was entitled to, to the *Hattons*.

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DE BROKE.

the Hatton family had held as tenants to him at a certain yearly rent the glebe and tithes belonging to him as vicar, and that he was an entire stranger to the rights of *the Hatton family* respecting the matter aforesaid.

The Bishop of
Ely answers.

The defendant the *Bishop of Ely* said, that the plaintiff was rector of *St. Michael's*; that there were in the town of *Longstanton* two parishes; that *Cockbutt* had been duly instituted into the vicarage of *All Saints*; but that he knew not the boundaries between the said parishes, or of any of the matters in the bill.

The cause heard.

The plaintiff replied; the defendants rejoined; and witnesses were examined both in town and in the country on the part of the plaintiff, and the defendants *the Hatton family*; and upon hearing counsel for all parties; and reading the following evidence on the part of plaintiff, viz. the several answers of the defendants; and on producing an indenture of release from *Herbert Burgoyne* and *William Towes* to *Edmund Hills*, dated the twenty-eighth of *October*, in the twenty-eighth year of *Queen Elizabeth*, proposed to be read by the plaintiff; to which piece of evidence the defendant's, *Lord W. de Broke's*, counsel objected; but the objection was over-ruled, and the said indenture of release allowed to be read; and also on producing to be read a paper writing purporting to be a terrier found amongst the papers of *Lady Hatton*; and also a paper writing out of the hands of *Trinity College* in *Cambridge*, and proved by *Mr. Serjeant Le Blanc*, purporting to be a terrier, and to which said two papers the said defendant's counsel objected to the reading thereof, and which said evidence was rejected by the court; and upon reading the following evidence on behalf of the defendants *Lord W. de Broke* and *Goodcheap*, viz. the several depositions of *S. Stanley*, *J. Cogen*, and *C. Morting*, to the second, third, and fourth interrogatories; and upon reading an order of this Court, dated the twenty-second of *November* last, for producing and reading on their behalf the bill, answers, and depositions in the cause of *Atkins v. Hatton*; and upon offering the depositions of *W. Bloom* to the third interrogatory taken in the said cause to be read on the part of the said defendants, the same was objected to by the plaintiff's counsel, and the said objection was allowed; and upon hearing plaintiff's counsel in reply, the said cause was ordered to stand over for the judgment of the Court.

Evidence admitted.

Evidence rejected.

Evidence rejected.

Curia advisare
vult.

The chief baron
delivers the judgment
of the court.

SIR ARCHIBALD MACDONALD, *Chief Baron*, now delivered the same accordingly, and the bill was dismissed against *the Hattons*, *Bishop of Ely*, and *Thomas Cockbutt*, with costs.

The bill dismissed
as to the plaintiff's common
law rights to tithes,
as to the glebe

THE COURT further ordered so much of the bill as prayed that the common law right of the plaintiff to all the tithes of what nature or kind soever arising in *St. Michael* may be established, lands, and as to the custom of giving notice.

and

and as prayed that all such glebe lands as may be found to be in the possession of the *Lord Willoughby de Broke* or *James Goodcheap* may be delivered up; and that a commission may issue to ascertain and settle the same, and to ascertain and settle the boundaries of the said two parishes; and that the custom of giving notice of setting out the tithes may also be established, be dismissed with costs.

ATKINS
against
LORD
WILLOUGHBY
DE BROKE.

THE COURT further ordered a trial at law upon the following issues:

Issues directed to
try,

FIRST, "Whether, from time whereof the memory of man is not to the contrary, a payment or composition of *four pounds* a-year hath been paid by the owners or the occupiers of the lands of the said *Lord Willoughby de Broke* in *Long Stanton*, in the occupation of the said defendant *James Goodcheap* to the rectors of *Saint Michael's* aforesaid, and their lessees and agents in lieu or satisfaction of or for all vicarial or small tithes, and titheable matters and things arising, growing, or increasing in or upon such lands, and that such payment hath been usually made about the third day of *May* in every year."

1st, Whether a
modus of 4l. was
payable in lieu of
the small tithes.

SECONDLY, "Whether the said plaintiff *James Atkins* is entitled in right of his said rectory of *Saint Michael's*, in the township of *Long Stanton* aforesaid, to the tithes of the lands in *Inham's Field*, late the property of the *Sir Thomas Hatton* deceased, and now in the occupation of the defendant *James Goodcheap*, or to some part thereof."

2d, Whether the
plaintiff was en-
titled to the
tithes of *Inham*
Field.

In the first issue, the defendants in equity to be plaintiffs at law, and in the second issue the plaintiff in equity to be plaintiff at law; to be tried by a special jury at the request of defendants; the judge to indorse, &c. and the equity to be reserved till after trial.

THE FIRST ISSUE was tried, and the jurors found that there was no such *modus* as was therein stated.

A verdict found
against the mo-
dus.

AS TO THE SECOND ISSUE, a similar issue having been directed in the cause of *Atkins v. Hatton*, and which had been tried before either of the issues directed in this cause, in which the *Hattons* had succeeded; it was therefore thought prudent to withdraw the record as to that issue, and a notice of motion now being served to obtain an order for taking the said issue *pro confesso*; and that the costs relating to the said issue both at law and in equity might be taxed, and afterwards paid by the plaintiff.

The record in
the second issue
withdrawn.

The cause came on for further directions on the first of *February* 1796; and on hearing counsel;

ATKINS
against
LOAD
WILLOUGHBY
DE BROKE.

The tithes of the
lands belonging
to Lord Wil-
loughby de Broke
decree.

The second issue
ordered to be
taken as confessed.
Costs.

THE COURT ordered the deputy to take an account of what was due to the plaintiff from *James Goodcheap* for all and singular the titheable matters and things which had arisen upon the lands occupied by him belonging to *Lord Willoughby de Broke* in *Longstanton*, in the parish of *Saint Michael*, during the time demanded by the bill, and for which lands both the defendants claimed an exemption from tithes; and that *J. Goodcheap* do pay to the plaintiff what shall be found due to him upon such account.

THE COURT further ordered the second issue to be taken as confessed.

THE COURT further ordered the deputy to tax the said plaintiff his costs both at law and in equity touching the first issue; and what should be found due when so taxed to be deducted out of the costs already taxed by the decree made on the hearing of this cause, the plaintiff to pay *Lord Willoughby de Broke* the balance of the said costs; and on the contrary, if the balance should be in favour of the plaintiff, the defendant to pay him the balance of such costs.

THE COURT further ordered the plaintiff to pay *the Hattens, &c.* their costs at law, as to the second issue to be taxed; the consideration of costs touching the account to be reserved till after the report.

MACDONALD, Chief Baron.
HOTHAM, Baron.
THOMSON, Baron.

MILARY TERM
34. GEO. 3.

BOWSHER and OTHERS against MORGAN.

Herefordshire, 10th February 1794.

The plaintiff, as impropriator of *Garway*, in *Herefordshire*, claims the great and small tithes of the parish, from the 13th of October 1789; and states, that the said tithes had been let to the defendant, but that he had received notice to quit on the twenty-third of March 1789, the year expiring on the

THE bill stated, that the plaintiff *R. Berkeley*, being in February 1789 well entitled to him and his heirs, in trust for the plaintiffs *Ca barine* and *Jane*, as their guardian and trustee, to all the great and small tithes of the several parishes of *Welsh Newton* and *Garway*, in the county of *Hereford*, as impropriate rector of the said parishes, by indenture dated the fourteenth of January 1789, demised, leased, set, and to farm-let to the plaintiff *J. Bowsher*, his executors, &c. all and singular the said corn, grain, hay, wood, great and small tithes, reserving the great and small tithes of the trust, the estates, and the wood, to hold to the plaintiff for twenty-one years, paying the first year seventy-nine pounds, and for every year afterwards one hundred and twenty-five pounds; that by virtue of such lease the plaintiff became entitled to receive all and singular the tithes of the said parishes, ex-

13th of October following. S. C. App. Rep. 404.

cept

cept such as were excepted; that the defendant occupied from that time certain lands therein, as tenant to the said *Robert Berkeley*, and had yearly growing thereon corn, grain, hay, garden stuff, fruit, clover seed, grass seed, and other matters, the tithes of which he had refused to pay under colour of a pretended demise or agreement, and had prevailed upon many people in the said parishes to pay him sums of money as compositions for tithes from their several lands in *Garway*; that the defendant had been served with due notice to quit the said tithes on the second day of *February* 1789, twelve days before the date and executing the indenture of lease to the said plaintiff; that he ought to have quitted and delivered up possession thereof accordingly; that he refusing so to do, the plaintiff, on the twenty-third day of *March* following, caused another notice to be served on him to quit and to deliver to him the possession of the said tithes at the end of that year, which he had also refused to comply with. The bill therefore prayed, that the defendant might discover and pay to the plaintiff *J. Bowsher* the single value of all the tithes subtracted and withheld from him.

BOWSHER AND
OTHERS
against
MORGAN

The defendant said, that his late uncle *James Coles*, from the year 1762 to the year 1782 when he died, had held and was the tenant of all the great and small tithes arising within, and payable to the impropriate rector of, the parish of *Garway* (except such as arose from off the lands of the plaintiff *Berkeley* as trustee) at the yearly rent of forty-six pounds from year to year; that on the death of his uncle he, as his executor, became the tenant of the said tithes; that he had ever since continued tenant thereof at such yearly rent from year to year; that some time previous to the month of *February* 1789, the plaintiff *Berkeley* became and was in that month entitled as guardian as aforesaid to the said yearly rent payable by him for said tithes, but that he was not entitled to receive the tithes in kind (except on the lands excepted), he the said defendant being the tenant of such tithes. He admitted, that *Berkeley* had leased to *Bowsher* the great and small tithes of the parishes for a term of years not expired; but denied that by virtue of such lease *Bowsher* was entitled to the tithes in kind of the parish of *Garway* (save of the lands excepted) he the defendant being tenant of such tithes, and entitled to the same; and he set forth the lands he occupied therein, and insisted that the plaintiffs were not entitled to an account from him, and that he ought not to be compelled to set forth the same. He also admitted, that he had received divers sums of money from several persons on account of the compositions for the tithes arising from the lands and grounds in *Garway* of the tithes whereof he was tenant; but said, that he had not, since the twenty-fifth day of *March* 1789, received any tithes in kind from any of the occupiers in the parish; and insisted, that the plaintiffs were not entitled to an account for the same. He denied that he had ever
been

The defendant
insists, that the
notice was not
sufficient.

BOWSER AND
OTHERS
against
MORGAN.

been applied to on the behalf of *Bowser*, save by the bill, other than to relinquish the said tithes as such tenant thereof; and he admitted that he had refused so to do until he should have a legal and proper notice for that purpose. He said, that in *March* 1789, a notice in writing was left at his house, viz. “*Mr. Morgan at Norton. I hereby give you notice to quit and deliver up the tithes, both great and small, of and within the parish of Garway, in the county of Hereford, at the end of the present year. Dated the twenty-third day of March 1789. William Hale, agent to Mr. John Bowsbire.*” He insisted that the said notice was not a legal and proper notice, or sufficient to determine his tenancy to the said tithes, and that the same was not determined.”

The cause
heard.

The plaintiffs replied; the defendant rejoined; and witnesses were examined on both sides; and the cause came on to be heard the tenth day of *December* 1793; when upon hearing counsel on both sides; and reading the following proofs on behalf of the plaintiffs, viz. a lease of the tithes in question, dated the fourteenth of *February* 1789, from *Robert Berkeley* to plaintiff *Bowser*; and a notice signed *William Hale*, dated the twenty-third of *March* 1789; and also reading the depositions of several witnesses taken in the cause; and several receipts for the defendant; and hearing the plaintiff's counsel in reply, the cause was ordered to stand over for the judgment of the court.

The bill retained
for a year.

THE COURT, on the tenth of *February* 1794, ordered the bill to be retained for a year, with liberty to the plaintiffs to proceed at law against the defendant touching the matters in question as they should be advised: costs and further directions to be reserved till after trial.

The plaintiff recovers
in ejectment.

An action of *ejectment* was brought against the said defendant to recover possession of the said tithes; and the jury found a verdict for the plaintiffs.

The cause came on again on the twenty-fourth of *February* 1795 on the equity reserved.

The tithes decreed,
with costs.

THE COURT ordered the deputy remembrancer to take an account of the several titheable matters which had arisen on the lands occupied by the defendant since the thirteenth day of *October* 1789; and also an account of the several sums of money received from the several occupiers of lands within the parish, by way of composition or otherwise, in respect of their tithes which had become due since the said thirteenth day of *October* 1789; the said deputy to tax the plaintiffs their costs, and to pay the same, together with what should be found due from him in the accounts herein before directed.

THE COURT FULL.

BREWER

BREWER *against* HILL.HILARY TERM
34. GEO. 3.*Hertfordshire, 1st March 1791.*

THE bill stated, that *Sir John Peachy, Baronet*, being in *March 1781* seised to him and his heirs, or otherwise well entitled to some good and sufficient estate of inheritance of or to the impropriate rectory or parsonage of *Hemel Hempstead*, in the county of *Hertford*, and being, in right thereof, well entitled to all and all manner of tithes, both great and small, arising therein, by indenture of lease dated the twentieth of *March 1781*, made between him and *Thomas Trott* for the considerations therein mentioned, demised to the said *Trott*, his executors, &c. all that the rectory or parsonage and vicarage aforesaid, &c. as therein recited for twenty-one years, subject to the covenants therein contained; that by a certain other indenture of lease, dated the eleventh of *September 1789*, made between *Thomas Trott* and *Thomas Patrick*, he leased his right to him the said *Thomas Patrick*; that by a certain other indenture, dated the twentieth of *December 1790*, made between the said *Thomas Patrick* and the plaintiff *Brewer*, he *T. Patrick* leased his right therein to the said *Brewer*; that by virtue thereof the said plaintiff was become well entitled to receive all and all manner of tithes, both great and small, within the said parish, and the titheable places thereof; that he had received such tithes from most of the occupiers of lands within the parish, or some composition for the same, save from the defendant *Hill*; that the said defendant had ever since *Michaelmas 1790*, and before that time, occupied a considerable farm and lands in the parish, from which he had the several matters stated in the bill, the tithes whereof he had refused to pay to the plaintiff *Brewer*. The bill therefore prayed, that he might set forth an account of the quantity of land so occupied by him in the said parish of *Hemel Hempstead* since *Michaelmas 1790*; the produce of the several titheable matters and things before-mentioned; and all other titheable matters and things whatsoever which had arisen thereon; the values thereof; that an account might be taken of what was due to the said plaintiff from the defendant, for or in respect of the same, since *Michaelmas 1790*; and that he might be compelled to pay what should be found due to him on taking such account.

The bill states that *Peachy*, the impropriator of the tithes of *Hemel Hempstead*, in *Hertfordshire*, demised them to *Trott*; that *Trott* demised them to *Patrick*; that *Patrick* had demised them to the plaintiff *Brewer*, and that the defendant had refused to pay.

S. C. Anstr.
Rep. 413.

The defendant said, that he did not believe that *Sir James Peachy, Baronet*, was in *March 1781*, or at any other time, seised in fee of the impropriate rectory; that he knew not whether he was in any manner entitled to the same, nor as such, or

The defendant says, that his lessor *C. Tower* had covenanted that he should only pay a compo-

sition of 3s. 6d. an acre to the owner of the tithes, in lieu of the tithe of the land demised; that *Trott*, the original lessee of the tithes, had agreed to that effect with the said *Tower*, and that the said covenant was binding on the present lessee.

in

Brewer
against
Hill.

in any manner proprietor or owner of all or any part of the titheable matters and things, either great or small, arising therein, or that such lease had been made as stated in bill; that at *Michaelmas* 1790, he occupied a farm and lands, with the appurtenances, situated in the said rectory, which consisted of arable, meadow, or pasture land: and he set forth the quantities of corn and grain, &c. &c. he had thereon as demanded by said bill; but he denied, that the plaintiff was entitled to receive in kind the said tithes, for that he held the said farm and lands under *Christopher Tower*, who had stipulated and agreed with him, at the time he let such farm and lands, that he should never be called upon to set out or render in kind such tithes for the space of four years from *Michaelmas* 1790, but that he should pay a composition to the owner for the great tithes, not exceeding three shillings and sixpence an acre statute measure; that he demised the same under a certain indenture, dated the second of April 1783, made between the said *Christopher Tower* and the said *Thomas Trott*; and he therefore insisted, that the said covenants and agreements so entered in between them respecting the great tithes of his said farm and lands were still subsisting and valid agreements. He further said, that he having so very inconsiderable a quantity of small tithes; and believing that, as every other landholder in parish paid after the rate of sixpence an acre in lieu and as a compensation for such small tithes, he should only be called upon to pay the same, he had kept no account. He further said, that on the twenty-second of November 1791, the plaintiff gave public notices in the parish church concerning the said tithes, viz. "*Hemel Hempstead, Herts,*
" tithes. Notice is hereby given, that the respective landholders
" and others within this parish are desired to attend at *Mr. Wil-*
" *liam Wilson's*, the sign of THE WHITE HART, on Friday, the
" second day of December next, at ten o'clock in the forenoon,
" then and there to account for their tithes of the year ending
" the twenty-ninth of September last. *Willoughby Brewer, No-*
" vember the twenty-second 1791;" that in pursuance of said notice he attended there for the purpose of paying the plaintiff what was due to him in respect of said great and small tithes after the rate aforesaid, but that he had refused to take the same. He denied, that he had ever received any notice from the plaintiff to set out his tithes, either great or small; or that he had ever demanded the same for the said year, save as aforesaid; and he insisted upon the said agreement, and that both the said *C. Tower* and the plaintiffs were bound by it.

The cause
heard.

The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides; and upon hearing counsel on both sides; and reading the following evidence for the plaintiff, viz. a lease from the dean and chapter of *Saint Paul's* to *Sir James Peachy, Baronet*, dated the twenty-third of June 1772; a lease dated the twenty-second of March 1780

1780 from the Reverend *W. Bingham* to Sir *James Peachy*; another dated the twentieth of *March* 1781, from Sir *James Peachy* to *Thomas Trott*; another dated the eleventh of *September* 1789 from *Thomas Trott* to *Thomas Patrick*; another dated the twentieth of *December* 1790 from *Thomas Patrick* to the plaintiff *W. Brewer*; the several depositions of witnesses taken in the cause; and the answer of the defendant; and reading the following evidence for the defendant, viz. an indenture of lease, dated the second of *April* 1783, made between *Christopher Tower* and *Thomas Trott*; several depositions; an assignment of the said lease from *Thomas Trott* to *T. Patrick*; and hearing the plaintiff's counsel in reply; the said cause was ordered to stand over for the judgment of the court; and the cause standing this day in the paper of causes for the judgment of the court;

BREWER
against
HILL.

Curia advisare
vult.

SIR ARCHIBALD MACDONALD, *Chief Baron*, delivered the same accordingly; and the deputy remembrancer was ordered to take an account of all the rectorial and vicarial tithes demanded by the bill, but without costs, to the time of the hearing; further directions and costs to be reserved.

The tithes decreed in kind, but without costs.

The deputy made his report, dated the fourteenth of *February* 1795; and upon opening the decree and report; and hearing counsel on both sides; and upon much debate of the matter touching the costs of taking the account;

THE COURT ordered the report to be confirmed, but without costs; and the defendant to pay to the plaintiff the sum of thirty pounds, seven shillings, and fourpence, reported due to him for his rectorial tithes; and also nine pounds, four shillings, and ninepence, for his vicarial tithes.

The report confirmed.

MACDONALD, *Chief Baron*.
HOTHAM, *Baron*.
THOMSON, *Baron*.

ALDRICK against MARRIOT.

Suffolk, 19th May 1794.

EASTER TERM,
34. GEO. 3.

THE vicar of *Stow Market* and *Stow Upland*, in the county of *Suffolk*, claimed the tithes of hay, clover, grass, trefoil, cinquefoil, rye grass, coleworth, tares, hemp, flax, hops, wool, lambs, agistment of barren and unprofitable cattle, and other small tithes arising therein in the years 1788 and 1789 in kind.

The vicar of the parishes of *Stow-Market* and *Stow Upland*, in *Suffolk*, is only entitled to 4d. an acre in lieu of the tithe of meadow and pasture land in *Stow Upland*.

The lands called *Back*, otherwise *Reads*, otherwise *Stickens*, parcel of the manor of *Stow Market*, are tithes free. But he is entitled to the other small tithes of the said parishes in kind.

The

DECREES IN TITHE CAUSES

The defendant, *Robert Marriot*, admitted, that the plaintiff was vicar ; and insisted, that, from time whereof the memory of man was not to the contrary, there ought to have been, and still ought to be, with respect to the said parish of *Stow Upland*, paid to and accepted by the vicar of the said parishes for the time being yearly and every year at *Lammas*, or as soon after as the same hath been demanded, the several *modus*es or customary payments following, that is to say : FIRST, For every milch cow the sum of twopence halfpenny, to be paid at *Lammas* in every year, for and in lieu and full satisfaction of the tithe of milk or cheese ; and if such milch cow be an heifer of the first calf, then the sum of one penny halfpenny and no more for that year. SECONDLY, For every acre of mown ground or meadow the sum of fourpence, to be paid at *Lammas*, in lieu and full satisfaction of the tithe of hay. THIRDLY, For the tithe of wood of every householder, one hen called *an hearth hen*, to be delivered at the vicarage house on *St. Stephen's Day* in every year. FOURTHLY, That when there was no tithe calf, an allowance had been and was to be made for every calf which was sold, the tenth part of the price of the calf or calves so sold ; but if any was weaned, then for every calf so weaned the sum of one penny halfpenny and no more, to be paid at *Lammas*. FIFTHLY, For every heifer of one year old for its feed the sum of one penny, to be paid at *Lammas*. SIXTHLY, The tithe lamb, if any there happened to be at *Lammas*, and if there was no tithe lamb, then for every lamb an halfpenny yearly to be paid at *Lammas*. SEVENTHLY, For pigs, where there was no tithe pig, for every pig the sum of an halfpenny. EIGHTHLY, For geese, where there was no tithe geese, for every goose the sum of an halfpenny, to be paid at *Lammas*. NINTHLY, For every foal the sum of one penny, to be paid at *Lammas*. TENTHLY, Eggs, if they be demanded in the week before *Easter*. The defendants set out the particular lands in their respective occupations in the said years, and the titheable matters which had arisen thereon, with the value of the same ; and said, that for several years previous to the plaintiff's induction, they had paid for the use of the vicar for the time being annual sums or compositions for and in lieu of certain tithes in kind arising from their lands and premises, some of which had been received by the plaintiff himself, including the aforesaid *modus*es ; but that if the said *modus*es should not be substantiated to the satisfaction of the court, the several matters and things for which they are stated to be due were included in the annual payments or compositions ; and that such several matters and things, together with all the other titheable matters and things for which no *modus* is before stated to be due and payable, ought to be covered by said annual payments ; that they had been several years paid to and received by the vicar of the said parishes for the time being;

ing; that the same were binding on the plaintiff until determined by *legal notice*, which they had not received.

ALDRICK
against
MARRIOT.

The defendant *T. C. Fiske* said, he occupied two pieces of meadow in *Stow Upland*, called *Stow Upland Field*, containing about five acres, and also a house, garden, and parcel of land containing about seven acres, but which was formerly computed at ten acres, situate in *Stow Market*: and he set forth the value of it, and of his titheable matters; and insisted, that the plaintiff was not entitled to the tithes thereof in kind, for that from timewhereof the memory of man was not to the contrary, there had been and was payable by each and every occupier of meadow and pasture land within and throughout the parish of *Stow Upland* to the vicar thereof for the time being, at *Lammas Day* in each year, or as soon after as demanded, a certain *modus* or yearly sum of fourpence an acre for and in lieu and full satisfaction and discharge of the tithes of all titheable matters and things whatsoever yearly arising in or upon, or had and taken from every acre of meadow land and every acre of pasture land within the said parish of *Stow Upland*, in and upon, and from every acre of land within the said parish used and occupied as meadow land or pasture land; that the said *modus* or yearly sum of money had, from time whereof the memory of man was not to the contrary, been accordingly paid to and accepted by the vicar of said parish of *Stow Upland*; and he insisted on the said *modus* in bar of plaintiffs demand of tithes of hay and other tithes arising from the said two pieces or parcels of meadow or pasture land, situate in said parish of *Stow Upland*. He also insisted, that this messuage, with the garden and other appurtenances thereto belonging, and the said piece or parcel of land in the parish of *Stow Market*, heretofore called *Backs*, were formerly part and parcel of the *Manor of Stow Market*, otherwise *Abbot's Hall*, in the parish of *Stow Market*; that the said manor of *Stow Market*, otherwise *Abbot's Hall*, with its rights, members, and appurtenances (whereof the said defendant's messuage and garden, with the appurtenances, and piece or parcel of land containing seven acres were parcel), was from time whereof the memory of man was not to the contrary, before, and down to and at the time of the dissolution of the late dissolved monastery of *St. Oswyth*, otherwise *Osyth*, in the county of *Essex*, parcel of the possessions of the said monastery; and that during all the time the abbot of the said monastery for the time being was seised in his *demesne as of fee* of the said *Manor of Stow Market*, otherwise *Abbot's Hall*, with its rights, members, and appurtenances, whereof the said messuage, &c. were parcel; and that the abbot of the said monastery for the time being, in right of his said monastery during all the said time by himself or his said farmers or tenants, so had and held the said

ALDRICE
against
MARRIOT.

manor of Stow Market, otherwise *Abbot's Hall*, with its rights, members, and appurtenances, whereof the said messuage, &c. were parcel, acquitted and discharged of and from the payment of all tithes whatsoever, as well great as small, yearly arising, &c. in or upon the same; that the said monastery being one of the greater monasteries, and having lands above the clear yearly value of two hundred pounds, was dissolved by virtue of the act of parliament made in the thirty-first year of *Henry the Eighth*, intituled, "An Act for the Dissolution of Monasteries and Abbies;" that by virtue of the said statute, and by reason of the abbot for the time being of the said monastery having, during all the time aforesaid, held, in manner aforesaid, the said *Manor of Stow Market*, otherwise *Abbot's Hall*, with its rights, members, and appurtenances, whereof the said messuage, &c. were part and parcel, acquitted and discharged of and from the payment of all tithes whatsoever, both great and small, he insisted on such exemption or discharge in bar of said plaintiff's demand of tithes of his said messuage, garden, and land in *Stow Market*. He further said, that the said *Manor of Stow Market*, otherwise *Abbot's Hall*, with its appurtenances, were granted out by the said king to *Sir Thomas Darcey, Knight*, his heirs and assigns, which by some means before or in the year 1659 came to *Alice How*, who conveyed the same (except a farm called *Abbot's Hall Farm*, and the tithes thereof) to *Thomas Blackerly* and his assigns, who in 1660 conveyed the said messuage and garden, with the appurtenances and land called *Backs*, to one *Joseph Crane*, under whom defendant claimed title thereto. He said, that he should have been ready to have paid the plaintiff the said *modus* of fourpence an acre for the said parcel of land in the parish of *Stow Upland*, in case he had ever demanded the same. He further said, that the two pieces of land in *Stow Upland* were for a considerable time before 1778, let to tenants who ploughed part thereof, and that during such time such tenants and the vicar of the said parish agreed that the said occupiers should pay to the vicar or vicars in lieu of the said *modus* of fourpence an acre for so much of said land as was used as meadow or pasture, and of the tithes of the titheable matters and things of so much thereof as was used as arable land, eightpence in the pound, according to the rent thereof, amounting to three shillings and fourpence a-year, and which said composition was accordingly paid to the plaintiff's father, as vicar, and others his predecessors, as vicars of the said parishes, until 1782, during which time part of the said land continued to be occupied as arable; and he insisted, for the reasons aforesaid, that he ought not to be decreed to account with the plaintiff for any of the titheable matters which had arisen on his said lands and premises since the said plaintiff became the vicar of the said parishes.

The

ALDRICK
against
MARRIOT.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and upon hearing counsel on both sides several days; and on reading the following evidence on the behalf of the defendant *T. C. Fiske*, viz. the minister's accounts from THE AUGMENTATION OFFICE from *Michaelmas* in the thirtieth to *Michaelmas* in the thirty-first year of *Henry the Eighth*; a grant from the said king to *Thomas Darcey*, dated the thirtieth of *July*, in the thirty-eighth year of the said king's reign; an indenture dated the twenty-fifth of *April* 1660, between *Thomas Blackerly* and *Robert Reynolds* of the one part, and *Joseph Crane* of the other part; an indenture dated the twenty-fifth of *March* 1708, between *George Richardson* of the one part, and *Thomas Richardson* of the other part; an indenture dated the sixth of *September* 1706, between *Joseph Crane* and *Edmund Crane* of the one part, and *C. Cutting* and *T. Raymond* of the other part; an indenture dated the twenty-fourth of *June* 1714, between *George Richardson* and *Rebecca* his wife of the first part, *George Peacock* of the second part, *Elizabeth Heuldon* of the third part, and *George Richardson* and *Mary Heuldon* of the fourth part; an indenture dated the sixth of *March* 1706, between *Charles Cutting*, *Thomas Raymond*, and *Joseph Crane*, of the one part, and *George Richardson* of the other part; the depositions of several witnesses taken in this cause; the depositions of *Thomas Turner* and of *Philip Richer* to the fourth interrogatory; and the deposition of *Joseph Pennington*, and certain exhibits marked with the letters A. and B. were severally offered to be read as evidence on the part of the said defendant, and the reading thereof was objected to by the plaintiff's counsel, and the objections allowed; and reading the following evidence on the behalf of the plaintiff, viz. certain terriers produced from the registry of the *Bishop of Norwich*, relating to the said parishes of *Stow Market* and *Stow Upland* aforesaid, beginning the nineteenth of *June* 1709, and ending the seventeenth of *May* 1784; the depositions of several witnesses taken in the cause; and the answers of several receipts signed *William Aldrick, &c.*; the cause stood over for the judgment of the court; and the cause being continued in the paper for that purpose;

THE COURT ordered a trial at law on the two following issues, to wit,

FIRST, " Whether, from time whereof the memory of man
" is not to the contrary, there hath been and is payable by each
" and every occupier of meadow and pasture land within and
" throughout the parish of *Stow Upland*, in the county of *Suf-*
" *folk*, to the vicar of the said parish for the time being, at
" *Lammas Day* in each year, or as soon after as demanded, a
" certain *modus* or yearly sum of fourpence an acre for and in
" lieu and full satisfaction and discharge of the tithe of all

F f 2

" titheable

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against
MARRIOT.

“ titheable matters and things whatsoever yearly arising, hap-
“ pening, growing, renewing, or increasing in or upon, or had
“ and taken from every acre of meadow land, and every acre of
“ pasture land within the said parish of *Stow Upland*, in and
“ upon, and from every acre of land within the said parish, used
“ or occupied as meadow land or pasture land.”

SECONDLY, “ Whether the messuage, with the garden and
“ appurtenances, and a piece or parcel of land called *Back's*,
“ otherwise *Read's*, otherwise *Stickson's*, in the occupation of the
“ defendant *Thomas Craske Fiske*, are part and parcel of the Ma-
“ nor of *Stow Market*, otherwise *Abbot's Hall*, in the parish of
“ *Stow Market*, in the county of *Suffolk*, formerly parcel of the
“ possessions of the monastery of *Saint Oswyth*, otherwise *Osyth*,
“ in the county of *Essex*, and as such acquitted and discharged of
“ and from the payment of all tithes whatsoever, as well great as
“ small, yearly arising, growing, renewing, increasing, or hap-
“ pening in or upon the same.”

The defendants in equity to be the plaintiffs at law in the first issue; and in the second issue, the defendant *T. C. Fiske* to be plaintiff at law.

THE COURT further ordered the deputy to take an account of all the titheable matters arising upon the lands in the occupation of the defendants *R. Marriot* and *James Bryant*, in the parish of *Stow Market*, during the time demanded by the bill, with costs; and also to take an account of the tithe of agistment, and all other tithes arising on the lands in the occupation of the defendants *R. Marriot* and several others, in the said parish of *Stow Upland*, except on such lands as were by them claimed to be covered by the before-mentioned *modus* of fourpence an acre, with costs, to be taxed; and also to take a like account as against the defendant *T. C. Fiske*, but that the same be without costs.

The first issue was tried at the summer assizes 1794, and a verdict found for the defendants, who were the plaintiffs therein.

The second issue was also tried at the spring assizes 1795, and a verdict found for the defendant *Fiske*, who was the plaintiff therein.

By an order made the seventh of *June* 1796, the deputy was at liberty to make a separate report as to the account directed against *Fiske*, and the cause was ordered to come on for further directions on such report, and on the *posseas* on the said issues.

In pursuance of which decree, and of a general order of transfer dated the sixteenth day of *June* 1795, and of the aforesaid order of the seventh of *June* last, the deputy remembrancer
made

made his report herein, dated the first of *July* 1796, and thereby certified that he had proceeded on the said reference; and that a charge having been brought in before him on the behalf of the plaintiff against the defendant *Fiske* touching the said tithes, he had considered the same; and it appearing to him that the tithes therein claimed arose from lands claimed to be covered by the *modus*, he had therefore disallowed the same.

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against
MARRIOT.

On opening the matter of the decree, report, and *posseas*, on the eighth of *March* 1796, and reading the same; and on hearing counsel for the plaintiff;

THE COURT ordered the report to be confirmed, and the bill to be dismissed as against *Fiske*, with costs both at law and in equity.

THE COURT FULL.

THE MAYOR OF LEICESTER *against* RUDING.

TRIN. TERM,
34. GEO. 3.

Leicestershire, 7th July 1794.

THE bill stated, that the plaintiffs, by virtue of divers grants to them made by divers kings and queens of *England* and of *Great Britain* or otherwise, had been for many years entitled to divers messuages, tenements, and lands, to the tithes of hay, small tithes, herbages, oblations, and obventions arising in the parish of *Saint Mary*, in or near the borough of *Leicester*, and particularly upon the estates called "The Farm of *Westcoates*," otherwise *the Westcoate's Estate*, and *Dannett's Hall*, otherwise *Dennett's Hall Estate*, belonging to the defendant *Ruding* in the said parish; that the defendants had severally occupied the said estates for several years past, and had, annually, hay, hemp, flax, potatoes, cows, mares, sheep, hens, geese, ducks, poultry, bees, milk, calves, foals, lambs, wool, eggs, honey, wax, and unprofitable cattle thereon, the tithes of which they had refused to pay. The bill therefore prayed an account and payment of what should appear due thereon.

The corporation of *Leicester* is entitled to the great and small tithes of the vicarage of *Saint Mary*, in the borough of *Leicester*, particularly to the tithes of the estates called *Westcoate's Estate* and *Dennett's Hall Estate*.

The defendant *R. Ruding* said that he was owner, and that his ancestors for several years had been the owners, and seised of *Westcoate's Estate*, and also of part of *Dannett's Hall Estate*; and that same consisted of divers messuages, lands, and tenements; and he insisted, that he was, and that his ancestors for several years past had been, seised of all and all manner of tithes of corn, grain, hay, and other tithes growing in and upon *Westcoate's Farm*, and upon such part of the *Dannett's Hall Estate* as belonged to him, as appeared by several deeds in his custody and set forth in his answer: and he set forth an account of all the houses and

lands

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OF LEICESTER
against
RUDING.

lands he had and claimed to be entitled to in *Westcoat's, Darnett's Hall*, and *Brumpping Stborpe*, and by whom they were rented of him, and the yearly rent thereof; but he said, that he could not set forth the boundaries as they lay contiguous to each other. He further said, that from a deed of the tenth of *January 1672*, it appeared, that *Walter Ruding* the father, and *Walter Ruding* the son, parties to that deed, and the said defendant's ancestors, were entitled to or at least had claimed not only the tithes of corn and grain, but also the tithe hay and all other tithes arising upon the said estates and farms; and that he claimed to be entitled to the tithes thereof as devisee for his life under the last will and testament of *William Ruding*, his late elder brother, deceased.

The defendant *T. Robinson* said, that he was the vicar or minister of the parish of *Saint Mary* aforesaid; that he believed the plaintiffs were entitled to the tithes demanded by the bill; that he had never pretended to be entitled to the tithe of hay and small tithes arising in the said parish; that neither he nor any of his predecessors had ever received any such tithes; but that in case it should appear that he was entitled thereto, he claimed the benefit thereof. He said, that he had received the *Easter offerings* or dues arising in the parish, but whether in his own right, or as tenant to the corporation, he could not set forth; for that he had, ever since his being inducted into the living, paid to the corporation annually the sum of three shillings and fourpence, but for what or on what account he could not tell, save that he had been informed it was on account of *Easter dues*. He further said, that there were certain other rights and dues belonging to him as vicar, which were mentioned in an ancient terrier remaining in the court of the archdeaconry of *Leicester*, and stated in his answer. He admitted, that there was no rectory in the parish; that it was a vicarage only, to which the king presented; that it was not endowed with any tithes whatsoever; and that the vicar was provided for by the said terrier.

The plaintiffs replied; the defendants rejoined; and witnesses were examined on the part of the plaintiffs in town.

The cause came on to be heard on the thirteenth day of *June 1793*, and at several following periods; when upon hearing counsel for all parties; and on reading an order dated the twenty-eighth day of *April 1792*, to prove exhibits on behalf of the said plaintiffs, viz. exhibit A. being an extract from a manuscript book marked *L and H. 72*, and intitled "*Rentall Monasterii Beatae Marie de pratis Leycestre generale*," in THE BODLEIAN LIBRARY in the university of *Oxford*; exhibit B. being also an extract from a manuscript book marked *seventy-five J.* and intitled, "*Registrum Librorum Monast. Beatae Marie de prat. Lecest.*"

“ Leycest. renovat tem. per fratris W. Charite tunc Precentoris,” also in THE BODLEIAN LIBRARY at *Oxford* respectively mentioned and referred to in the deposition of *John Caley*, gentleman, a witness on behalf of the said plaintiffs, and being offered to be read in evidence on their behalf, the defendant's counsel objected thereto which was allowed by the court; and the following evidence being then read on behalf of the plaintiffs, viz. a grant to the corporation of *Leicester*, dated the seventeenth of *February* 1575, the thirty-first year of *Queen Elizabeth*; a lease, dated the twenty-fifth of *September* 1604, from the mayor of *Leicester* to *Walter Ruding*, and various other leases from the said corporation to the said *W. Ruding*, and to other persons; the answer of the defendant *R. Ruding* to the second amended bill, Fo. 2.; a grant of the twenty-fifth of *January*, in the twenty-fourth of *Queen Elizabeth*, to *Edmund Downing* and *Peter Ashton*; the depositions of *J. Leslin* and *J. Bruce*; a charter of the first of *June*, in the forty-first year of *Queen Elizabeth*; and reading the following evidence on the behalf of the defendants; an entry in the minister's account in the thirtieth year of *Henry the Eighth*, relating to the *Abbey de Pratis*; an entry of the thirty-first year of *Henry the Eighth*; an entry of the fourth and fifth, and fifth and sixth years of *Philip and Mary*; various entries in the minister's accounts, beginning the fifth year of *Queen Elizabeth* to the sixth of *James the First*; the certificate of the survey of the colleges, chauntries, &c. made by the *Bishop of Lincoln* and others, dated the thirty-seventh year of *Henry the Eighth* from THE AUGMENTATION OFFICE; the particular of a grant dated the fourth of *May*, the fourth and fifth of *Philip and Mary*; the office copy of a grant to *Reeves Budd*, of the fifth of *August*, in the fourth and fifth of *Philip and Mary*, from THE CHAPEL OF THE ROLLS; an office copy of the said grant, dated the twenty-fifth of *January*, twenty-fourth of *Elizabeth*; an indenture of release, dated the twenty-seventh of *March* 1652, between *Thomas Nurge* of the first part, *Walter Ruding* the elder and *Walter Ruding* the younger of the second part; a particular for a lease, dated the twenty-second of *November* 1574, from THE AUGMENTATION OFFICE; the copy of a lease, dated the first of *June*, in the eighth year of *Queen Elizabeth*, from the said queen to *Edward Holte*; the copy of a lease, dated the twenty-second of *November*, in the tenth year of *Queen Elizabeth*, from the said queen to the said *Edward Holte*; and upon reading further evidence for the plaintiffs, viz. several entries from the minister's accounts, beginning the tenth year of *James the First*, and ending the seventeenth year of *Charles the First*; and upon hearing the reply on the behalf of the plaintiffs, the cause was ordered, on the third day of *February* last, to stand over for the judgment of the court; and the cause standing in the paper this day;

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OF LEICESTER
against
RUDING.

THE MAYOR
OF LEICESTER
against
RUDING.

THE LORD CHIEF BARON delivered the judgment of the Court ; and the deputy was ordered to take an account of what was due to the said plaintiffs from the defendants respectively for the several titheable matters demanded by the bill which had arisen since *Michaelmas* 1768.

But THE COURT did not think fit to direct the costs of this suit to this time to either party, except to the defendant *T. Robinson*.

N. B. The bill was filed 12. Geo. 3.

TRIN. TERM,
34. GEO. 3.

COLLYER against HOWSE.

Norfolk, 26th July 1794.

The vicar of *Wroxham*, with the chapelry of *Salehouse*, in the county of *Norfolk*, annexed, claims the tithes of clover cut green and given to horses used in husbandry ; of clover hay in hay cocks, and not in the swarth ; and of every tenth evening and tenth mornings meal of milk ; and states, that the defendant milked the cows partially ; and set out the clover hay by the tenth swarth.

See S. C. Anst. Rep. 481.

THE bill stated, that there was, and had been for time immemorial, a perpetual vicarage in the parish of *Wroxham*, with the chapel of *Salehouse*, in the county of *Norfolk*, annexed ; that the vicar thereof was, by some endowment or prescription, entitled to all the tithes arising therein in kind, except the tithes of corn and grain ; that in the year 1776 he, the plaintiff, was instituted and inducted into the said church ; that he had ever since been the vicar thereof ; that he was, as such, entitled to the said tithes, and particularly to the tithes of hay, clover, and milk ; that the defendant *Howse* occupied and was the owner of a farm, on which, since the twelfth of *August* 1790, he had mowed clover grass and milked cows, but had not rendered the tithes thereof ; that he or his servants had usually, on the days of milking, when the tithe of milk ought to have been paid, milked his cows only in part at first, and rendered the tithes of such partial milking as the just tithe of all the milk ; that soon after the tithing-man had withdrawn himself, he proceeded to milk the rest of the cows, and never rendered the tithe of the milk so last milked, or made any satisfaction for the same. The bill further stated, that the defendant *Read* occupied a farm in the parish, and had mowed thereon clover grass, of which he did not justly set out the tithes ; for that he had only set them out by the tenth swarth instead of the tenth cock as he ought to have done. The bill therefore prayed, that they might be decreed to account for the said tithes, and pay what should appear to be due thereon.

The defendant says, that clover cut green and given to horses used in husbandry is not titheable ;

The defendant *John Howse* submitted, whether the plaintiff was entitled to the tithes of *Wroxham* and *Salehouse*, he having, since his institution and induction into the said vicarage, been duly licensed to the perpetual curacy of the parish of *Southwold*, and to the vicarage of *Raydon*, in the county of *Suffolk*, without having obtained any dispensation or union for holding the said vicarage of *Wroxham* with *Salehouse*. He admitted, that he was owner

owner of a farm in the parish; that he had mowed, in 1791, twenty acres of clover grafs thereon; and he insisted, that he had set out the tithes thereof duly and fairly. He further said, that he had cut a small quantity of clover grafs green for the support and maintenance of his horses used in tilling the land; and that he was advised that no tithe was due for the same. He further said, that he had kept upon the said premises some milch cows; that he had caused them to be milked; and that the tenth mornings and tenth evenings meals were justly and truly rendered and paid to and taken away by the plaintiff, or by some person by his direction; that he did not set out his tithe milk in the manner as stated in the bill; but that, on the contrary, on the mornings and evenings on which the tithe milk became due, the cows were milked fairly, and in the usual way, and the tithe fairly rendered and paid. He further said, that he had not mowed, taken, or carried away, from any part of his said lands, any meadow grafs made into hay, except a very small quantity upon some borders which was given green to the horses used in tilling his farm for their necessary support for want of other food; and that he had also mown some fodder for the purpose of, and which was used in thatching, and litter for the yard, and for no other purpose; and that he had not set out any tithe of such fodder, apprehending that none was due. He admitted, that the tithe of such clover grafs as was mown as aforesaid and made into hay was set out by *the swarth*; and insisted, that the same was set out in the same manner as the tithe of clover grafs had been before set out for and accepted by the plaintiff, as vicar of the parish; that it was the usage and custom of the neighbouring parishes where tithe of clover grafs or hay had been taken in kind; that clover grafs was so very liable to heat and receive damage by being put together in heaps when green, that the same was never put into cocks until after it had been several times turned in *the swarth*, and almost made into hay; that it was frequently carried off while in *the swarth*, without ever being put into cocks, and particularly in wet seasons; that from the appearance of the weather, he was under the necessity of taking away some of his said clover grafs without cocking or heaping the same; but that a full tenth of such clover grafs as was mown and made into hay was set out as and for the tithe thereof, and might have been taken away by the plaintiff if he had thought fit so to do.

The defendant *J. Read* admitted, that he occupied lands in the parish; and spoke nearly to the same purport as the other defendant.

The plaintiff replied; the defendant rejoined; and divers witnesses were examined on both sides; and the cause came on to be heard on the seventh of *July* 1794; when upon hearing counsel fully on both sides; and reading the depositions of several

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against
HOWSE.

that he had set
out his tithe
milk justly and
fairly;

that he had
mowed fodder
for thatching and
litter, for which
no tithes were
due;

that he had, ac-
cording to the us-
ages of the
country, set out
his clover hay in
the swarth.

The cause
heard.

COLLYER
against
Howse.

several witnesses on both sides taken in the cause, the cause was ordered to stand over for the judgment of the Court; and the same now standing for that purpose, judgment was pronounced accordingly this day by THE LORD CHIEF BARON.

The bill dismissed as to the clover cut green;

THE COURT thereupon ordered the bill, so far as it sought a compensation for the tithe of clover, to be dismissed with costs.

and as to the clover hay.

THE COURT further ordered, as to so much of the bill as charged the defendants with improperly setting out the tithe of the said clover grass, to be dismissed, without costs on either side.

THE COURT further ordered a trial at law upon the following issue, to wit,

An issue directed to try if the tithe milk had been fairly set out.

“ Whether the defendant *John Howse* did or did not duly and fairly set out and render to and for the use of the said plaintiff, the tithe or tenth of all the milk had and taken by him from his cows fed and kept on his farm in the parish of *Wroxham*, or the titheable places thereof, since the twelfth day of *August* 1790, the period mentioned in the bill.”

A re-hearing granted as to the tithe of the clover hay set out in swarths.

The plaintiff, in *Michaelmas Term* 1794, exhibited a petition to the court, stating, that he conceived himself aggrieved by so much of the decree as ordered, “ that as to so much of the said bill as charged the defendants with improperly setting out the tithe of clover grass, the bill should be dismissed without costs;” and submitting that the Court ought to have decreed in favour of the petitioner so far as the bill sought relief concerning the tithe of clover grass, he prayed a re-hearing on that head; and on the seventeenth day of *December* 1794, a re-hearing was ordered. It was accordingly put in the paper of causes for that purpose, and came on to be re-heard on the fifteenth day of *May* 1797 before the said Barons: when upon opening the decree and petition; and hearing counsel on both sides for several days; and reading the several depositions taken in the cause on both sides; and hearing the reply; and upon full debate of the matter; the cause was ordered to stand over for judgment; and the same standing in the paper of causes this day, the twenty-first of *July* 1797;

The point re-heard.

Curia advisare vult.

The decree as to the dismissal of the bill respecting the tithes of clover hay in swarths reversed, and the deputy ordered to take an account of the tithes thereof as demanded by the bill.

THE COURT ordered, that so much of the decree of the twenty-sixth day of *July* 1794, as is before stated, be reversed; and that the deputy take an account of what was due from the defendant *J. Howse* (the defendant *J. Read* having, previous to the re-hearing of this cause, departed this life, and the plaintiff waiving the account prayed against him by his bill) in respect of the tithe of all clover grass had and mowed and made into hay, and taken by him from off his farm and lands situate within the said parish of *Wroxham*, with *Salehouse*, and the titheable places thereof,

thereof, from the period in the bill mentioned, but without costs; and that the sum of ten pounds deposited with the said deputy remembrancer to abide the event of the said petition be returned by the said deputy remembrancer to the plaintiff.

COLLIER
against
HOWARD

COOK *against* GRIFFIN.

TRIN. TERM,
34. GEO. 3.

Buckinghamshire, 26th July 1794.

THE vicar of *Dynton*, otherwise *Doynington*, in the county of *Bucks*, claimed the small tithes of the parish; the great and small tithes of certain lands in the parish, and particularly in the township or hamlet of *Moreton* (in which are two farms called *Compton's Farm* and *Full Rivey Farm*), and also within the townships or hamlets of *Eston*, otherwise *Aston*, and *Watlington*, otherwise *Warrington*, otherwise *Waldridge*; and stated, that *Henry the Eighth*, by his letters patent dated the twenty-seventh of *December*, in the thirty-seventh year of his reign, granted the rectory of *Dynton*, with its rights and appurtenances then late belonging to the monastery of *Godstowe*, in the county of *Oxford*, and also the patronage and right of presentation to the vicarage of *Doynington*, to *R. Brown*, *C. Edwards*, and *W. Wardlowe*, their heirs and assigns for ever; that the said grant in no wise infringed upon his said right as vicar of the parish; that by divers mesne conveyances, the said rectory and advowson became vested in *Richard Serjeant*; that *Richard Serjeant* afterwards sold and conveyed thereout some portion of the tithes thereof (but not the rectory itself) to *Symon Mayne*, who was lord of the manor of *Dynton*; that *Symon Mayne* being, in 1660, tried and convicted of high treason, his estates became confiscated, and vested in the crown; that they were afterwards granted to his Royal Highness *James*, then *Duke of York*; that all parsonages and tithes were excepted out of the said grant; that the said tithes so belonging to the said *Symon Mayne* having remained in the crown, one or more lease or leases thereof had been some time since granted to *W. Raper*; that the said tithes then were become vested in him; that he claimed to be entitled, by force thereof, to the tithes of corn and hay of the *Demesne Lands* of *Dynton*, and of certain other lands in the parish; and that he, in some respects, disputed the plaintiff's right to the tithes he claimed; that *Richard Serjeant* being so entitled to the rectory did, many years ago, convey to *Richard Ingoldby*, since deceased, certain messuages, lands, &c. in *Watlington*, otherwise *Waldridge*, whereof the plaintiff claimed to be entitled to all tithes, both great and small; that the said *R. Serjeant* also executed some deed to the intent that the said *R. Ingoldby* and his heirs, &c. should be secured from the payment of tithes by paying to the vicar about thirty-seven pounds a-year for the tithes arising thereon; that he, the said *R. Serjeant*, dying, *William Serjeant*, his nephew and

The vicar of *Doynington*, in *Buckinghamshire*, is entitled to the small tithes of the parish; and to the great tithes of the hamlets of *Moreton*, *Eston*, and *Watlington*.

COOK
against
GRIFFIN.

and heir at law, became seised of the premises so conveyed as
afore said ; that he neglected to pay the tithes, or such compo-
sition in lieu thereof ; that in *Easter Term* 1683, *Richard Strick-*
land, the then vicar of the parish, and the successor of *Thomas*
Carter, with whom the said composition was made, filed his bill
against the said *Richard Ingoldby* and his tenants in *Waldridge*,
and also against *W. Serjeant* and his tenants in the hamlet of
Aston, for the arrear of the said composition of thirty-seven
pounds yearly, when, amongst other things, the same was ordered
to be paid in equal proportions ; that the said *R. Ingoldby* did,
some time after the pronouncing of the said decree, and in con-
sequence thereof, continue to pay to the said *R. Strickland* one
moiety of the said yearly payment of thirty-seven pounds ; and
by virtue of a deed of indemnity of the eighth of *July* 1682,
he called upon *William Serjeant* to repay him the same, which he
neglected to do ; that thereupon he brought his ejectment for
the recovery of the lands demised to him, and obtained a verdict,
and entered up a judgment therein ; that the said *W. Serjeant*
thereupon filed his bill of complaint in THE COURT OF CHANCERY
against the said *Sir Richard Ingoldby* to be relieved against the
said judgment ; that the cause came on to be heard on the
twenty-seventh of *May*, in the first year of *James the Second*,
when it was ordered, that unless the plaintiff did pay to the
defendant what he had paid to the vicar for tithes, together with
his costs and charges, and did in future pay the same during the
continuance of the said term, or indemnify the said defendant and
his estate from the payment of tithes, the said bill should stand
dismissed, and the injunction be dissolved. The bill then further
stated various other matters and deeds, &c. and that the defendant
Mary Serjeant, widow, still retained the possession of the rectory
of *Dynton*, and insisted, that it had never been expressly con-
veyed from her family ; that she claimed to be entitled thereto,
and to the tithes of *Upton* in *Dynton* ; and that she disputed his
right to such great tithes. The bill then further stated, that the
defendant *Griffin* and others, the occupiers, had, for a considerable
length of time, occupied farms in the said townships of different
people, and had divers titheable matters and things arising there-
on, particularly wheat, barley, oats, pease, beans, oxen, barren
cows, sheep shorn in and out of the parish, and other matters, as
stated in the bill. The bill then further insisted, that the plaintiff,
as vicar of *Dynton*, was entitled to all tithes, both great and
small, arising upon the said farms in the townships of *Moreton*,
Aston, and *Waldridge* ; that divers payments, by way of compo-
sition for such tithes, had been paid to him by the occupiers of
lands therein since he had been vicar of the parish ; that he,
having discovered that such compositions were very inadequate
to the real value thereof, determined to take his tithes in kind,
or to have the payments enlarged ; but that the defendants not
acceding to his proposals, he caused a notice in writing, bearing
date

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against
Griffin.

date the nineteenth day of *September* 1787, signed by him, to be served on the defendants the occupiers respectively, whereby they were desired to take notice, that the composition then paid to the plaintiff in lieu of tithes of the farms occupied by them, would, on the fifth of *April* 1788, cease and determine; and that from thenceforth they were required to set out their tithes in kind; that notwithstanding such notice, they had refused to set out their tithes in kind, or to make him any satisfaction in lieu thereof. The bill therefore prayed an account of the tithes withheld since the fifth day of *April* 1788, particularly of the agistment of the several oxen, barren cows, heifers, steers, stirks, horses, colts, and sheep shorn out of the said parish, and brought into the said parish after shearing time, and afterwards sold or sent out of the parish before the next shearing time, and also of sheep shorn within the said parish, and sent out of the said parish before the next shearing time, and of all other the barren and unprofitable cattle kept, fed, and depastured by the defendants in and upon the said farms and lands occupied by them as aforesaid since the said fifth day of *April* 1788; and payment of what should appear due thereon.

The defendants *William Griffin, James Dover, Charles Jones, and James Franklin*, said, that the plaintiff might be entitled to the small tithes of the parish, but that he was not, to their knowledge, entitled to the great tithes therein, or in the hamlets of *Aston, Walldridge, Moreton, and Ford*. They admitted, that they had occupied farms in the parish, and had kept, fed, and depastured thereon oxen, cows, heifers, steers, horses, colts, and other barren and unprofitable cattle, and had divers sheep shorn out of the parish, and brought into it, and kept on the farms and lands occupied by them as aforesaid after shearing time, and afterwards sold or sent out of the said parish before the next shearing time, and also sheep shorn within the said parish, and kept there after they were shorn, and sent out of the said parish before the next shearing time; but that they knew not whether the tithes of agistment of such cattle were due to the vicar, as they had never been called upon, except by the plaintiff, for the same, nor had ever paid any such tithes, unless they were included in the compositions which had been paid by them respectively in lieu of tithes. They set forth their several farms, the landlords names, the rentals, the quantity of acres, the several compositions they had paid, the quantities, qualities, and values of the titheable matters they severally had thereon since the fifth day of *April* 1788. They admitted the notice as stated in the bill; and said, that not considering the plaintiff as legally entitled to any increase of payment, they had refused to set out or pay him the tithes in kind, or to come to any agreement for such increase; but that they knew not whether the compositions were temporary compositions, or whether they had from time to time been altered
or

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against
GRIFFIN,

or varied, averring, that they had not been altered or varied since they had respectively held their farms ; and submitting whether, on such account or on any other account, the same was or was not binding upon the plaintiff.

The defendant *Thomas Williams*, *Anne Rogers*, and *Thomas Rogers* admitted, that they respectively occupied farms in the township of *Waldridge*, as tenants to *George Powlett* ; that the said farms were formerly part of the estate of *Sir Richard Ingoldby, Knight* ; that they were freed from and indemnified against the payment of tithes ; that they had received the notice as stated in the bill ; and that they were willing to account for their titheable matters, if the Court should think fit ; but they submitted, that their landlord should have been a party to the suit.

The defendant *Edmund Waller* said, that the plaintiff was vicar of *Dyton* ; that the right of presentation thereto might, upon the dissolution of the monastery of *Godstow*, have vested in *Henry the Eighth*, who might, by his letters patent, have granted the same, together with the rectory and church of *Dyton*, with its rights and appurtenances, then late belonging to the said monastery, to the several persons as stated in the bill ; but that he left the plaintiff to the proof thereof. He further said, that he could not set forth, whether such grant did in any manner affect the right of the vicar to the tithes claimed by him, he not having stated therein the endowment by which he supposed the said tithes to have been appointed to the vicarage ; but he submitted, that the plaintiff ought to have made *the Attorney General* a party to the suit. He further said, that by mesne conveyances the rectory and advowson had vested in *Richard Serjeant* ; that he had conveyed some portion of the tithes thereof to *Symon Mayne* ; that upon the attainder of *Symon Mayne*, in 1660, such portion did by escheat vest in *Charles the Second* ; but that he had never heard either of such a person as *Matthew Raper*, or that the said lands were at this time claimed by him. He admitted, that he was seised in fee of certain lands situate in *Morles*, occupied by the defendant *W. Griffin* ; but whether the same had been immemorially subject to the claim set up by the plaintiff, or were then so, by virtue of any grant or endowment, he could not set forth ; but he said, that a certain sum had been paid in lieu of the tithes ; and that he left the plaintiff to establish his claim.

The defendant *Peter Lock* said, that he claimed title to his lands under the will of *Jane Harrington*, as stated in his answer ; and left the plaintiff to prove his right to the tithes thereof.

The defendants *William Goodball* and *Rebecca* his wife admitted, that the plaintiff was vicar, and entitled to all small tithes arising

arising in the parish ; and, for any thing they knew to the contrary, to all tithes whatsoever, as well great as small, arising upon the lands in the bill mentioned.

Book
against
GALFRID.

The defendant *Mary Serjeant* admitted the plaintiff was entitled to all the small tithes of the parish, and to all tithes, as well great as small, arising upon certain lands within the townships of *Moreton*, *Eston*, and *Waltrington* ; but insisted, that she was entitled to the great tithes of *Upton*, as devisee for life of all the estates of her late husband ; that she did not retain the possession of the rectory of *Dynton* ; that she did not claim to be entitled thereto, nor to any tithe of any lands in the parish, save as aforesaid ; that she did not dispute the plaintiff's right to such tithes as he alledged to belong to him ; that the defendants *W. Goodhall* and his wife were in possession of the rectory, and that they had exercised some acts of ownership over the chancel of the church of *Dynton* ; but whether the rectory was ever expressly conveyed from her family she knew not, though she said, that she believed, that her husband's father received of *John Vanbatten*, or some of his ancestors, a sum of money for his right thereto : and she waived all right, title, and claim to the rectory in favour of the defendants *Goodhall* ; and disclaimed all right, title, and interest to and in such tithes as the plaintiff by his bill alledged to belong to him, save with respect to the great tithes of *Upton* aforesaid.

The *Bishop of Winchester* said, that *Edward the Confessor* granted to the church of *Winchester* certain lands in *Moreton*, in the parish of *Doynington* ; that they were then in the occupation of the defendant *Griffin* ; but whether they were liable to the payment of the tithes demanded by the plaintiff as vicar of the parish he could not say, as the said plaintiff had not set forth the grant or endowment under which he derived his title to the same. He further said, that it might be true that a certain sum had been paid to the vicar of *Doynington* in respect of the tithes of the farm then in the occupation of the defendant *Griffin* ; but whether for such lands, or for the lands of the defendant *Waller* held together by him as one farm, or whether the plaintiff was legally entitled to the same, he could not set forth. He submitted to the Court, that though such payment might have been made for such lands, yet if the same was not legally payable, the payment thereof ought not to prejudice the church of *Winchester* ; and he referred the plaintiff to such evidence as he might be able to adduce in support of his claim. He further said, that he had caused the ledgers of the dean and chapter of *Winchester*, in which are entered the leases and confirmations granted by the see of *Winchester*, and the pipe rolls kept at *Wolvesey* to be examined ; that it appeared in the most ancient rolls and leases, that the rent of *Moreton*, or of the lands then in the occupation of the defendant *Griffin*, was twenty pounds

COOR
against
GRIFFIN.

pounds *per annum*, and therefore not of very small value, as suggested by the bill. He further said, that the lands so leased from time to time by *the Bishop of Winchester* at the rent of twenty pounds *per annum*, and then, as he had been informed and believed, in the occupation of the said defendant *W. Griffin*, were one half of the lands then occupied by him, and for which it might be true that the payment of thirty pounds, eighteen shillings, was insisted on in lieu of tithes.

The defendants *Matthew Raper*, *Elizabeth Raper*, and *Sarah Raper*, admitted, that by letters patent, dated the twenty-first of *July 1773*, his present majesty, in consideration of a fine of eighty pounds paid by their late father *Matthew Raper* into THE EXCHEQUER, and in consideration of the yearly rent by the said letters patent reserved, and of the conditions and agreements therein mentioned, and with the consent of the then commissioners of the treasury, demised to him all those tithes of corn or hay, &c. as are therein recited. They further said, that as to so much of the bill as sought a discovery of *William Raper's* title to the tithes within the townships or hamlets of *Moreton*, *Waldridge*, and *Aston*, they had never claimed or pretended to have any right, title, or interest, of, in, or to the tithes of the aforesaid townships, or any part thereof; and they disclaimed all right, title, or interest to the same as his heirs.

By an order of this court, the seventeenth day of *December 1791*, on the application of the plaintiff, the bill as against the *Bishop of Winchester* and *Edmund Waller* was dismissed with costs.

To the answers of *William Griffin* and others, the plaintiff replied; and the defendants rejoined; and divers witnesses were examined on the part of the plaintiff and of the defendants *Griffin*, *Dover*, and *Franklin*; and the cause came on to be heard on the nineteenth day of *May 1794*; and upon hearing the cause several days; and reading the following evidence on behalf of the plaintiff, viz. an endowment of the vicarage of *Dynon*, in the year 1209, contained in the book of institutions in the time of *Hugh Wells*, *Bishop of Lincoln*; a charter in the reign of *Henry the Second*, confirming the grants of various possessions belonging to the monastery of *Godstowe*, contained in an ancient register book of the possessions of *Godstowe*, in the custody of the king's remembrancer of this court; an entry in another ancient book, called "*Pope Nicholas's Taxation*," in the custody of the king's remembrancer of this court, intituled, "*Wendovre Vicar de Donyngton decem Marce*;" an entry from an ancient book, called "*A Book of Aids*," brought from the registry of the *Bishop of Lincoln*; an entry from the ecclesiastical survey returned by the commissioners appointed in pursuance of the act of parliament in the twenty-sixth year of *Henry the Eighth*, of the value of

of the vicarage of *Dynton*; a particular of a grant, from the augmentation office of the rectory of *Donington*, from the monastery of *Godstowe* to *Skrimpton* and *Edwards*, in the thirty-seventh year of *Henry the Eighth*; the plaintiff's institution to the vicarage of *Dynton*, otherwise *Donington*, in the deanery of *Wendover*, the fourth of *October* 1773; an office copy of the bill and answer in this court, in *Easter Term* 1683, *Strickland v. Ingoldby* and others; the several answers in this cause; three receipts from *John Lovell*, then vicar of *Dynton*, dated in 1756 and the two following years; the depositions of several witnesses examined in the cause; and upon reading the following evidence on behalf of the defendants *Griffin*, *Jones*, *Dover*, and *Franklin*, viz. an extract from the parliamentary survey, dated the ninth of *July* 1650; the depositions of several witnesses taken in the cause; and hearing the plaintiff's counsel in reply; the cause was ordered to stand over for the judgment of the Court until this day; when

Coor
against
Griffin.

THE LORD CHIEF BARON delivered the judgment of the court in the presence of the counsel for the several parties; and it was thereupon ordered, that the deputy remembrancer should take an account of what was due to the plaintiff from the defendant *William Griffin* and others respectively for the several titheable matters and things demanded by the bill from the fifth day of *April* 1788, and tax the plaintiff his costs as against *William Griffin* and others.

THE COURT further ordered the bill to be dismissed as against *William Goodball* and *Rebecca* his wife, *Mary Serjeant*, *Matthew Raper*, *Elizabeth Raper*, and *Sarah Raper*, with costs, and as against *Peter Lock* without costs.

The deputy remembrancer made his report, dated the twentieth day of *June* 1797; and on the twenty-ninth of *June*, upon opening the decree and report, and reading the same, no counsel appearing for the defendants, the report was confirmed, and the defendants ordered to pay to the plaintiff the respective sums reported due.

FILEWOOD against GURNETT; et 2 Contra.

MICH. TERM,
35. GEO. 3.

Essex, 26th November 1794.

THE rector of *Stifford*, in the county of *Essex*, prayed an account and payment of the tithes of the several matters and things which had arisen on the defendant's farm in the said parish subsequent to *Lady Day* 1790, and payment of what should appear due thereon.

The rector of
Stifford, in *Essex*,
prays an account
of tithes with-
held.

FILEWOOD
against
GUANETT;
et c. Contra.

The defendant
says, that he paid
him his tithes to
Lady Day 1790;
and files a cross
bill praying that
the rector might
account for what
he had received.

The defendant said, that he occupied a farm part of which lay in the parish of *West Thurrock*, and part in *Stifford*, belonging to *John Hogarth*, who was patron of the living, and had presented the plaintiff to the same; that he had had divers titheable matters and things arising thereon; that from *Michaelmas* 1788, the plaintiff had collected his great tithes in kind, or compounded with him for the small tithes at fifteen guineas; that he had paid him the same to *Lady Day* 1790; and he set forth a true account of all his titheable matters; and filed a cross bill for an account of all the matters and things touching the demand made by the original bill; and prayed, that he might be at liberty to set out what had been paid by him to the rector against what should be found due to him, if any thing, on account of the matters claimed by his bill; that if, on the whole of such account, there should be found a balance due to him, that the rector might be decreed to pay the same to him; and that the original bill and the cross bill might come on to be heard together.

The rector sub-
mits to account.

The rector appeared and put in his answer, and submitted to account; and the plaintiffs in both causes replied; and the defendants rejoined; and both being at issue, divers witnesses were examined on both sides; and upon hearing counsel in both causes for all parties; and on reading the several proofs taken in these causes;

The original
bill dismissed
with costs; and
the cross bill without costs.

THE COURT ordered *the original bill* to be dismissed with costs; and *the cross bill* to be dismissed without costs.

MICH. TERM,
35. GEO. 3.

HOWSE against CARTER.

Buckinghamshire, 27th November 1794.

The canons of
Windsor, as im-
propriators of
the great and
small tithes of
Datchet, in *Buck-*
inghamshire,
claim the agist-
ment tithes of
sheep fed on
vetches, clover,
and turnips, be-
tween shearing-
day and shear-
ing-day.

THE bill stated, that the dean and canons of the free chapel of *Saint George*, within THE CASTLE OF WINDSOR, were seised of the rectory of *Datchet*, in the county of *Bucks*, and of all tithes arising in the parish in kind; that they had granted the same to *John Russell* for twenty-one years; that *John Russell* had assigned to the plaintiff the said tithes from *Lady Day* 1789 for the remainder of the term; that the defendant occupied lands in *Datchet*; that he had sowed part thereof with vetches, clover, turnips, &c. and consumed the same with wether and other sheep which he bought in about *Michaelmas*, and kept until after *shearing time* in the following year, and then sold them during the second winter after they were brought in; that he had also depastured divers unprofitable cattle, as well as cows yielding milk, and had had various other titheable matters, but had not rendered

rendered to the plaintiff the tithes thereof. The bill therefore prayed an account and payment thereof.

Howse
against
CARTER.

The defendant said, that part of the vetches and clover had been eaten by his working horses and oxen, and the tithes of the residue paid to the plaintiff in kind; that in the year 1791, he sowed part of his grounds with turnips, vetches, clover, wheat, barley, oats, and pease; that he had kept on his pasture land several wether sheep and an ewe, which were bought in about *Michaelmas*, kept until after shearing-time, and then sold the second winter; that it was the custom of the farmers around *Datchet* to have quantities of sheep after shearing-time folded at night upon their fallow lands; that such sheep were in the day-time usually fed upon turnips, vetches, clover, or upon pasture lands sown for that purpose; that they are called *folded sheep*; and that during that time they are fed on hay and cut food, and are not considered to be profitable to the farmer, otherwise than by manuring the fallow lands for the benefit of future crops, whereby the great tithes are considerably increased; for that although they are sometimes improved during that time, they are oftener thereby reduced in value, and frequently die; that it is also a custom among farmers to keep their sheep after they are shorn upon turnips, vetches, clover, and upon grass lands, without having them folded at night; that they are then denominated *sheep at rest*, and are considered profitable to the farmers by increasing in their weight and size; that the greater part of the said sheep were, after being shorn, and previous to their being sold, *folded sheep*, and in the day-time fed upon turnips, vetches, and grass land, which had in that year paid tithe of hay; that the rest of such sheep, except such as died, were *sheep at rest*, according to the aforesaid description, from such shearing-time until they were sold; that the greater part of the turnips sown as aforesaid, and a considerable part of the vetches and clover sown in the said year, were eaten by sheep so folded and kept upon the aforesaid ground after shearing time, and were sold in the early part of the ensuing winter. He admitted, that he had not accounted with the plaintiff for the tithe agistment of such sheep last alluded to, as such sheep were, between the times of shearing and the sale thereof, kept upon turnips and grass land which had paid tithe for hay in the said year. He further said, that the remainder of the said ground was depastured by *sheep at rest*; and although he had never particularly accounted with the plaintiff for the tithe agistment of the said last-mentioned sheep, yet that he had tendered to him seven shillings as a satisfaction for the same, which he had refused to accept; but that he did not admit that any such tithe was due. He also said, that some parts of the said vetches were suffered to stand for seed; and that he had rendered to the plaintiff the whole

The defendant says, that there is a usage in the parish to fold sheep at nights on the fallow, and feed them with hay; and that these *folded sheep* are unprofitable; that the said sheep are fed in the day time on vetches and turnips, and are called *sheep at rest*;

that the lands on which they were so fed had previously paid the tithes of hay.

Howse
against
CARTER.

of the tithe thereof in kind. He also said, that the parts of clover, sown in the said year, which were not so eaten as aforesaid, were eaten by his working cattle, and by his milch cows, the tithe milk of which the plaintiff had taken in kind. He also said, that he had paid the plaintiff a composition of three guineas for all small tithes from *Michaelmas* 1789 to *Michaelmas* 1790, for which the plaintiff had given him a receipt. He also said, that he had paid the tithes in kind of milk, eggs, chickens, apples, and other fruit, subsequent to *Michaelmas* 1791; that he had had four calves, which he sold for three pounds, six shillings, and sixpence, and had tendered the plaintiff the tenth part thereof, but which he had refused to accept; that all the sheep kept by him in 1790 and 1791 were fleeced; that he had rendered the tithe of wool in kind; and that the sheep called the *sheep at rest* did, during such time, increase in value about one shilling and sixpence *per head*.

The cause
heard.

The plaintiff replied; the defendant rejoined; and witnesses were examined on the part of the defendant only; and upon hearing counsel on both sides;

The tithes de-
manded by the
bill decreed with
costs.

THE COURT ordered the deputy remembrancer to take an account of what was due for agistment tithe of all the sheep fed upon the defendant's lands (a) in *Datchet*, with costs.

MACDONALD, *Chief Baron*.

HOTHAM, *Baron*.

PERRY, *Baron*.

(a) See S. C. Anst. Rep. 500.

MICH. TERM,
35. GEO. 3.

POTTS against ADAIR.

Suffolk, 20th December 1794.

The glebe lands
belonging to the
vicarage of *Flixton*
Saint Mary,
in *Suffolk*, ascer-
tained and set
out under a
commission is-
sued for that
purpose.

THE bill stated, that the plaintiff was, in the year 1776, presented, instituted, and inducted into the vicarage of *Saint Catherine of Flixton Southhelmbam*, otherwise *Flixton Saint Mary*, a vicarage endowed; that there had been, from time immemorial, a large portion of glebe land belonging, by prescription, endowment, or otherwise, thereto; that the defendant *A. Adair* had, for several years, held, as owner, a considerable farm in the parish, and had occupied a close of about five acres of the glebe land lying near his park; that the defendant *C. Howard* had also, for several years, occupied a considerable farm in the parish, and another part of the said glebe land called *Gallow Hill*, lying in a close called *Mill Flightle*; and also a piece of land lying amongst the ground of the defendant *A. Adair*, not far from the highway leading from *Bungay* to *Harleston*; that the defendant *T. Gower* had also held, for several years, a farm in the said parish, and had occupied another part of the said glebe land, to wit,
a piece

POTTS
against
ADAIR.

a piece of land exchanged, lying in a close called *Plumbs*; that the defendant *W. Clarke* had also occupied a farm in the parish, and other parts of the glebe land, to wit, a piece of ground, containing one acre, in a close, and several other closes near to the said glebe land; that the said defendants had not, during the time they had been in the occupation of their said farms, paid the plaintiff any sum of money on account thereof; and that such glebe land having for many years been confounded by the said occupiers or their predecessors with other lands, and the ancient balks or meres which distinguished the same having been removed, he, the plaintiff, was not sufficiently acquainted with the situation or extent thereof to distrain at law for the rent, or to maintain an ejectment for the same; that he had frequently requested the defendants to account for and pay the rent respectively due from them for the said glebe land, but that they had refused so to do. The bill then charged, that the defendants were severally possessed of other lands, which also belonged to the plaintiff as part of his glebe land, although he had not been able to discover the same; and prayed, that they might account for all such parts of the glebe land as then were, or had been at any time, in their respective occupations; that they might describe and distinguish the same; that they might set forth whether they had not some, and what ancient and other terriers, maps, plans, or writings, wherein the said glebe land is expressly described or distinguished, and state the full contents thereof, so far as they respect the said glebe lands or any part thereof, and the manner whereby it came into their power or possession; that they might account for the rents and profits thereof, and deliver up the same to the plaintiff, with all such terriers as might appear to belong to him; that they might surrender the ancient metes and bounds of the said glebe land, as far as they should appear to have been removed by them or their predecessors; and that, if necessary, A COMMISSION might issue to ascertain, by metes and bounds, the glebe land belonging to the said vicarage.

The defendant *A. Adair* admitted, that the plaintiff was vicar of *Flixton*; that there was some glebe land belonging to the vicarage; that he had been, for some years past, in possession of about five acres thereof, supposed to be part of a close called *Rowfan's*, or *Rowfall's*; that the said close was part of a farm; and that his uncle had paid to the vicar of the parish seven pounds a-year for the rent of all the several parcels of glebe land lying in the said farm; that he had received notice from the plaintiff that he would take the glebe land into his own hands at *Michaelmas* 1791; and that upon perusing the copy of a terrier of the year 1613, and a map and rental in his possession, it appeared, that there were two fields near his park, marked respectively in the said map B four and B five, as described in his answer.

POTTS
against
ADAIR
AND OTHERS.

The other defendants also admitted, that there was glebe land belonging to the vicarage in their respective possessions; and they set forth the same, and the annual payments they had made to the plaintiff for the same; and further said, that the glebe land in the parish had been for several years confounded with other lands; and that the ancient balks or meres which distinguished the same, if any such there were, had been long since removed.

The cause was ordered to be heard on the bill and answer; and after hearing counsel on both sides;

THE COURT ordered *A. Adair* to deliver to the plaintiff possession of the glebe land described in his answer; to pay to the said plaintiff the rent due for the said glebe land from *Michaelmas* 1791, the amount to be ascertained by *Henry Burton*, land valuer, whom the Court authorized to call before him all such persons as he should think proper for his better ascertaining the said rent, the said persons before they attend him to be sworn before one of the barons, or a commissioner authorized to take affidavits in this court; and each to abide by their own costs with respect to the glebe land directed to be delivered up.

The defendants *C. Haward*, *T. Green*, and *W. Clarke*, having, by their answer, admitted that they were respectively in possession, as tenants to *A. Adair*, of their respective farms, except of such pieces of glebe as were intermixed therein, and for which they had paid rent to the plaintiff, and not to *A. Adair*; and that they had respectively in their occupation some glebe land.

THE COURT further ordered a commission to issue to ascertain such glebe land; and that the commissioners, for the better ascertaining and setting out thereof, should call before them all such persons as they shall think proper to examine, and to administer an oath to all such persons to give true evidence before them, and to return the commission, with the evidence taken thereon, with all convenient speed.

A commission accordingly issued; and the commissioners, on returning it, certified, that they had called before them land surveyors, and examined them upon oath, and had ascertained, set out, and distinguished the glebe lands, and marked the same with metes and bounds, in the respective occupations of the said defendants, from other lands also in their several possessions; and that from such evidence, and by four terriers, respectively dated in 1713, the fourth of *July* 1735, the sixteenth of *May* 1777, and the eighteenth of *May* 1784, as fully set forth and described in the said certificate returned into this court more fully appear.

The

The cause came on for further directions on the twenty-eighth of *July* 1796; and upon opening the decree and certificate;

POTTS
against
ADAIR
AND OTHERS.

THE COURT ordered the certificate to be confirmed; the vicar to be put into possession of the glebe land set out; the remembrancer to enquire what rent was due from *C. Howard*, *T. Gower*, and *W. Clark*, in respect thereof, from the year 1789 to the year 1791, and also from 1791 to the present time; and that what he should find due from the said defendants (as tenants to *Alexander Adair*), or any one of them, for rent of the said glebe land, be paid by them respectively to the plaintiff or his order; and that the plaintiff should pay to the aforesaid defendants their costs.

BERKELY against HILL.

Worcestershire, 8th *June* 1795.

TRIN. TERM,
35. GEO. 3.

THE plaintiff, as lessee of the great and small tithes of the rectory impropriate and vicarage impropriate of *Claines*, in the county of *Worcester*, under the dean and chapter of *Christ Church*, in *Oxford*, as impropriators of the rectory, and *William Denny*, as impropriator of the vicarage, claimed the single value of all the tithes so demised to him which had arisen on the defendant's lands for four years and a half from the twenty-ninth of *September* 1782.

The respective impropriators of the tithes of the impropriate rectory and vicarage of *Claines*, in *Worcestershire*, are entitled to their tithes in kind.

See the next cause.

The defendant *Thomas Hill* said, that the tithes of part of the parish belonged to other persons, and particularly to the rector of *Saint Swithin*, in the county of *Worcester*; and he set up the following *modus*, viz. one penny for every milch cow, in lieu of tithe milk; fourpence for every calf calved in the parish; one farthing for every lamb yeaned therein; one farthing for every fleece of wool shorn therein; sixpence for every hoghead of cyder sold which was made from apples grown within the parish, and not in gardens, in lieu of the tithe of apples grown in the parish from which such cyder was made, and so in proportion for any greater or less quantity; and fourpence for every hoghead of perry sold which was made from pears grown within the parish, and not in gardens, the sum of fourpence, in lieu of the tithes of pears grown in the parish from which such perry was made, and so in proportion for any greater or less quantity, at *Candlemas* yearly, or so soon after as demanded.

The cause came on to be heard on the eighth of *June* 1795; and upon hearing counsel for all parties; and reading several passages in the defendant's answer; the several depositions taken in this cause; an order to prove the following exhibits,

G g 4.

dated

BERKELEY
against
HILL.

dated the fourth of *February* last, being receipts given to *James Strickland* for tithes, from the fourteenth of *February* 1770, to the twelfth of *April* 1783; an indenture of lease and counterpart, dated the fifth of *September* 1783, between *William Denne* of the one part, and *John Berkeley* and *William Rice* (the plaintiffs), of the other part; an indenture of lease, bearing date the nineteenth of *June* 1789, between the dean and chapter of *Christ Church*, in *Oxford*, of the one part, and *Henry Wakeman*, Esquire, of the other part;

THE COURT ordered the deputy to take an account of what was due for the tithes demanded by the bill, with costs.

TRIN. TERM,
35. GEO. 3.

CECIL against WAKEMAN.

Worcestershire, 8th *June* 1795.

A bill to establish certain modes as payable to the vicar of *Claines*, in *Worcestershire*, in lieu of the tithes of milk, calves, lambs, wool, cyder, and perry, dismissed with costs.

THE plaintiffs were owners and occupiers of divers farms, lands, and estates within the parish of *Claines*; and they filed the bill on behalf of themselves and the other owners and occupiers of farms and lands within the said parish and the titheable places thereof, stating that the parish of *Claines*, in the county of *Worcester*, had been immemorially, and then was, one separate and distinct parish; that there was therein a *rectory impropriate* and a *vicarage impropriate*; that the vicarage was endowed with divers tithes; that the rectory was formerly part of the possessions of *the Brothers of Saint Walston*, a religious house in or near to *Worcester*; that the rectory then belonged in fee simple to the dean and chapter of *Christ Church*, in *Oxford*; that the vicarage was formerly part of the possessions of the prioress and convent of *the Monastery of Whistones*, in the county of *Worcester*, and was in the possession of the prioress and convent at the time it was dissolved, in the twenty-seventh year of *Henry the Eighth*; that upon the dissolution thereof, it became vested in his majesty; and that it was afterwards granted to some person or persons in fee simple, and was then lawfully vested in *William Denne* in fee simple; that the rectory consisted of the tithes of corn, grain, and hay, except in certain parts of the parish, the tithes of which belonged to the rector of *Saint Swithin*, in *Worcester*, and also except certain other parts, the tithes of which belonged to the owners of particular parcels of land in the parish; and also except certain other parts, the tithes of which, as well great as small, belonged to the vicar of the parish; and also except certain other parts, of which the tithe of hay, and all tithes except of corn and grain, belonged to the vicar; that the vicar was entitled to all tithes, except such as belonged to the rector, to such particular owners as aforesaid, and to the rector of *Saint Swithin*; that particularly the vicar was entitled to the tithes of milk, calves, lambs, wool, apples, and pears, or payments in lieu thereof, within

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within all parts of the parish, except in those parts to the tithes of which the rector of *St. Swithin*, and the owners of particular parcels of land, were respectively entitled; that the cure of souls within the parish belonged to a *perpetual curate*, who had an annual salary paid to him by the vicar; that such curate was not entitled to tithes or other ecclesiastical dues arising in the parish, except *Easter offerings* and *surplice fees*, which he had sometimes received by the permission of the vicar, to whom they of right belonged; that by ancient custom used within the said parish there had been immemorially payable by the owners and occupiers of land therein to the vicar, the several ancient customary payments after mentioned (except for such of the lands, the tithes of which exclusively belonged to the rector of *Saint Swithin*, and to such particular owners as aforesaid) in lieu and satisfaction of tithes in kind of the several titheable matters and things, that is to say, **FIRST**, For every milch cow kept, fed, or depastured within the said parish, or the titheable places thereof, by such occupiers or farmers as aforesaid, the sum of one penny, in lieu of the tithe of milk in said parish or the neighbourhood thereof, called *white* of such milch cows. **SECONDLY**, For every calf fallen or calved within the said parish, or the titheable places thereof, the sum of fourpence in lieu of the tithe of such calf. **THIRDLY**, For every lamb fallen or yeaned within the said parish, or titheable places thereof, the sum of one farthing in lieu of the tithe of such lamb. **FOURTHLY**, For every fleece of wool cut or shorn within the said parish, or the titheable places thereof, the like sum of one farthing in lieu of the tithe of wool. **FIFTHLY**, For every hoghead of cyder sold, which was made from apples grown in the said parish, or the titheable places thereof, and not in gardens, the sum of sixpence in lieu of the tithes of apples from which such cyder was made, and so in proportion for every greater or less quantity. **SIXTHLY**, For every hoghead of perry made from pears grown within the said parish, or the titheable places thereof, and not in gardens, the sum of fourpence, in lieu of the tithes of the pears from which such perry was made, and so in proportion for every greater or less quantity than an hoghead. That the said several *modus*es were payable to the vicar at *Candlemas* yearly, or so soon after as demanded, and had immemorially been accepted and taken by such vicars as immemorial payments in lieu of the said tithes; and that no tithes in kind of any of the said titheable matters had been ever in the memory of man taken, except as aforesaid. The bill then charged, that the defendant *W. Denne* was seised of the vicarage in fee simple, and entitled to such customary payments in lieu of tithes; that the rectory had been for more than two hundred years demised by the dean and chapter to the owners of the vicarage; that the owners of the vicarage, being also lessees of the rectory, had demised all the tithes and payments in lieu thereof indiscriminately; that some confusion had thereby arisen with respect to the said tithes; but that if the dean and chapter,

and

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and not *William Denne*, should appear to be entitled to such customary payments, the owners and occupiers of lands ought not to be prejudiced thereby, but ought to have such payments established against the said *William Denne*, in case he should be entitled thereto, and against the dean and chapter if they should be entitled thereto. The bill therefore prayed, that the said customary payments might be established; and the vicar and all succeeding vicars, or the dean and chapter, might be decreed to accept the same accordingly.

The defendants, *the Wakemans* and others, admitted the several matters respecting the parish, and the several parts thereof, as stated in the bill; but denied the existence of the *modus*; and insisted, that the tithes of all and singular the titheable matters and things arising in the said parish and the titheable places thereof, were payable respectively to the impropriator of the rectory, and to the impropriator of the vicarage, and that they had always been paid in kind.

The plaintiffs replied; the defendants rejoined; and witnesses were examined on both sides; and on hearing counsel for all parties; and the plaintiff's counsel offering to read the depositions of *J. Severn* taken *de bene esse* in this cause as evidence on the behalf of the plaintiffs, and being objected to; and on reading his deposition to the first interrogatory cross examined by the defendant, the objection being allowed; and on reading the depositions of *W. Frome* to the seventh and eighth interrogatory; and hearing the defendant's counsel; and upon reading the depositions of the defendant *W. Thomas*, examined as a witness on behalf of the other defendants pursuant to order dated the twenty-seventh of *June* 1792; and two exhibits, purporting to be agreements for the tithes of the parish of *Claines* entered into by the defendant *Henry Wakeman* the elder and the several persons therein named for 1787 and 1788; an order dated the fourth day of *February* last to produce and prove exhibits; and reading the same, being several receipts given by *J. Strickland* for tithes from the fourteenth of *February* 1770 to the twelfth of *April* 1783; an indenture of lease and counterpart, dated the fifth of *September* 1783, between *William Denne* of the one part, and *John Berkley* and *William Rife* of the other part; an indenture of lease dated the nineteenth of *June* 1789, between the dean and chapter of *Christ Church Oxford* of the one part, and *Henry Wakeman* of the other part; the depositions of several witnesses taken in the cause, and the counterparts of several leases, being leases of certain tithes arising within the parish of *Claines*, from *William Denne*, the then impropriator thereof, to the different persons therein named; and on full debate of the matter;

THE COURT ordered the bill to be dismissed, with costs.

MACDONALD, Chief Baron.
HOTHAM, Baron.
PERRYN, Baron.

LORD

LORD STAWELL *against* ATKINS.TRIN. TERM,
35 GEO. 3.*Hampshire, 11th June 1795.*

THE bill stated, that the plaintiff, *Lord Stawell*, was seised of the freehold for the term of his natural life, of and in *Hunt's Timsbury Farm*, including therein *Fisbwear Meadow* and certain lands and premises called *Fairborne's*, as part and parcel thereof, containing in the whole by estimation two hundred and ninety-two acres, and thirty-six perches, situate in the parish of *Timsbury*, in the county of *Hants*; that he was also seised of the freehold for the term of his natural life of and in *Hill Fields Farm*, containing by estimation one hundred and two acres, one rood, and twenty-two perches in the said parish; that the plaintiff *Heneage Legge* was entitled to the said two farms as tenant for life in remainder, expectant on the decease of *Lord Stawell* without issue male; that the plaintiff *Henry Legge* was entitled to the said two farms as tenant in tail in remainder, expectant on the decease of *Lord Stawell* and *Heneage Legge* severally without issue male; that the said two farms, the particulars of which were set forth, were partly occupied by the plaintiffs *P. Jewell*, *C. Sharpe*, and *W. Harding*, as tenants to *Lord Stawell*; that the defendant, *N. Dance* and *Harriet* his wife, claimed to be owners of the impropriate rectory of *Timsbury* for the term of her natural life; that the defendant *Charlotte Holland* claimed to be entitled for life to the said impropriate rectory after the decease of *Harriet Dance*; that the defendant *William Chamberlayne* also claimed the said rectory as remainder-man in fee; that *N. Dance* and his wife, as owners of the said rectory, were entitled amongst other tithes and dues to the *modus*es after mentioned; that the defendant *John Atkins* was tenant to *Dance* and his wife of all tithes and dues, both great and small, for a term of twenty-one years not yet expired; that there then was, and immemorially had been an ancient custom within the parish of *Timsbury*, to pay a *modus* of ten shillings a-year on *Michaelmas Day*, in lieu of the small tithes of *Hunt's Timsbury Farm*, including therein, as part thereof, the lands called *Fisbwear Meadow* and *Fairborne's*, and another *modus* of two shillings and sixpence a-year, on *Michaelmas Day*, in lieu of the small tithes of *Hill Fields Farm*; that the said *modus*es had been immemorially paid to and accepted by the impropriator in lieu of all small tithes yearly arising upon the said farm; that the said defendants *Dance* and his wife had themselves accepted the said last-mentioned *modus* of two shillings and sixpence from *Lord Stawell* and *Jewell*, or one of them, as owner and occupier of *Hill Fields Farm*; that they had in their custody, some receipts, ancient title deeds, evidences, papers, and writings relating to said payments, whereby

The impropriator of the parish of *Timsbury* in *Hampshire*, is only entitled to a *modus* of 10*l.* a-year in lieu of the small tithes of *Hunt's Timsbury Farm*, including the lands called *Fisbwear* and *Fairborne's*; and a *modus* of 2*l.* 6*s.* a-year in lieu of the small tithes of *Hill Fields Farm*.

it

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it appeared that the said *moduses* had been constantly paid to and received by the impropriators. The bill then stated, that the church or chapel of the parish was served by a curate or clerk, who for the time being received an annual pecuniary stipend or salary of twenty-four pounds, of and from the person who had the right of appointment or nomination to the same for the performing divine service therein, and that same was paid by the person nominating thereto, as the rector, impropriator, or owner of the said rectory or otherwise; that the rector, impropriator, as owner of the said rectory, was liable and subject to the payment of, and did pay yearly the sum of twelve pounds in payment or satisfaction, of part thereof, for the duty performed by such curate; that the plaintiffs *Jewell, Sharpe, and Harding*, were severally the occupiers of the aforesaid farms and premises, in respect of which such *moduses* were paid, as tenants thereof, were entitled and ought to have the full benefit of the same; that they had been always ready and willing, and had frequently offered to pay the same to the said defendant *John Atkins*, the tenant or lessee of defendants *Dance* and his wife; that he had refused to accept the same, and insisted upon tithes in kind. The bill therefore prayed, that the said *moduses* might be established; that the testimony of the plaintiff's witnesses might be perpetuated; and that an account might be taken of what was due from the plaintiffs *Peter Jewell, Clement Sharpe, and William Harding* respectively to the said *John Atkins*, for or on account of such *moduses* of ten shillings and two shillings and sixpence respectively; the plaintiffs being willing, and thereby offering to pay what should be found due on such account.

The defendant *John Atkins* admitted, that *Hunt's Timbury Farm* and *Hill Fields Farm* included such lands and premises as stated in the bill; that he was tenant of the tithes; that the church or chapel of *Timbury* was served by a curate, who received twenty-four pounds a-year from the person or persons who had the right of appointment for the performing divine service therein; that the same was paid and payable by the person or persons nominating or appointing thereto, as the rector or impropriator of the said rectory, or as owner or proprietor of certain tithes called *the Portions of St. Lawrence*, in the parish of *Romsey Extra* in the said county, formerly belonging to the said rectory; that the impropriator of the said rectory, as such for the time being, was liable and subject to the payment of, and did yearly pay the sum of twelve pounds, in part payment of or satisfaction for the duty performed by such curate, and that the defendants *Dance* and wife then paid the same; that *John Flemming*, the present owner of the said tithes called *the Portions of St. Lawrence*, paid likewise to such curate the other twelve pounds annually, in part payment of the duty performed at the said church by such curate, and that they appoint such curate alternately; but he denied the existence of the two *moduses*; and said, that

that the plaintiffs had offered to pay them ; but that he had refused to accept the same or either of them ; and had insisted upon being paid the tithes in kind, and that on their refusing so to do, he had brought actions at law against them for the recovery of the tithes, both great and small (*a*).

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The defendants *N. Dance* and *Harriet* his wife, *C. Holland*, and *William Chamberlayne*, admitted their respective titles to the said rectory to be as stated in the bill ; that a lease of the tithes thereof had been granted to *Atkins* as aforesaid ; and that the plaintiffs were seised and possessed, as before described, of the said two farms ; but they denied, that the said *modus*es existed, or that there were any other *modus* or *modus*es in lieu of the tithes of the said farms, or of either of them.

The plaintiffs replied ; the defendants rejoined thereto ; and the cause being at issue, divers witnesses were examined, as well on the part of the plaintiffs as of the defendant *Atkins* ; and upon hearing counsel for all parties ; and on reading the depositions on behalf of the plaintiffs ; and several receipts given by *John Chandler*, the former lessee of the tithes, for the *modus*es in question ; and also reading the several answers ; and the deposition of *Benjamin Blundell* to the sixth and seventh interrogatory being offered to be read, and objected by the defendant *Atkins*'s counsel, and the same being rejected by the Court ; and reading the several proofs taken in this cause for the said defendant *Atkins* ; and hearing plaintiff's counsel in reply ;

THE COURT ordered issues to try the existence of the said *modus*es.

The parties proceeded to a trial ; and the jury found,

As to THE FIRST ISSUE, " That from time whereof the memory of man was not to the contrary, the owners and occupiers, some or one of them for the time being, of the farm or tenement first therein mentioned called *Hunt's Timbury Farm*, including therein the meadow therein also mentioned called *Fisbwear*, and the lands and premises called *Fairborne's*, as part and parcel thereof, and containing and described as therein mentioned (*b*), have paid and been accustomed to pay, and of right ought and were liable and subject to pay yearly and every year at the feast of *St. Michael the Archangel*, or so soon after as the same was and should be demanded to and for the use of the owner and proprietor of the impropriate rectory therein also mentioned, or his or their lessee, agent, or tithe-gatherer, the ancient or yearly sum of *ten shillings*, as

(*a*) See S. C. Anstr. Rep. 566, 567.

b: *Viz.* containing in the whole by estimation two hundred and ninety-two

acres, and thirty-six perches or thereabouts, be the same more or less, lying, &c. See S. C. Anstr. Rep. 564.

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“ a *modus* or customary payment for and in lieu of and satisfac-
“ tion of and for all and every the small or privy tithes yearly
“ arising, happening, growing, and renewing in, upon, or out
“ of the said farm called *Hunt's Timbury Farm*, and the said lands
“ and premises thereunto belonging, including the said meadow
“ called *Fishwear*, and the said lands and premises called *Fair-*
“ *borne's*, as the said *Henry Lord Stawell, Heneage Legge, Peter*
“ *Clement*, and *William Harding* had in their bill alledged.”

The jury in like manner found,

As to THE SECOND ISSUE, “ That from time whereof the me-
“ mory of man was not to the contrary, the owners and occu-
“ piers, some or one of them for the time being of the farm or
“ tenement called *Hill Fields Farm*, containing and described as
“ therein mentioned (a), had paid and been accustomed to pay,
“ and of right ought and were liable and subject to pay yearly
“ and every year at the feast of *Saint Michael the Archangel*, or
“ so soon after as the same was or should be demanded to and
“ for the use of the owner and proprietor of the impropriate
“ rectory of *Timbury* therein mentioned, or his or her lessee,
“ agent, or tithe-gatherer, the ancient or yearly sum of *two shil-*
“ *lings and sixpence*, as and for a *modus* or customary payment for
“ and in lieu of and satisfaction of all and every the small or
“ privy tithes yearly arising, happening, growing, or renewing
“ in, upon, or out of the said farm called *Hill Fields Farm*, and
“ the lands and premises thereto belonging, as in the said bill
“ was also alledged.”

The cause now came on to be heard upon the *poslea*, and for further directions on the sixth of *May* 1796; and upon opening the decree and *poslea*; and reading the same; and hearing counsel for all parties;

THE COURT ordered the *poslea* to be confirmed; and the two *modus's* of *ten shillings* and *two shillings and sixpence* to be established.

The plaintiffs *Jewell, Sharpe*, and *Harding*, had from time to time paid to *Atkins* several sums of money for and on account of the tithes of the lands, covered by the *modus's*, but without prejudice thereto; and thereupon

THE COURT further ordered the deputy remembrancer (b) to take an account of what they had respectively paid, and that what should be found due thereon should be repaid by *Atkins* to them respectively.

(a) Containing by estimation one hundred and two acres, one rood, and twenty-two perches or thereabouts, be the same more or less, lying, &c.

(b) ABEL MOYSEY, Esq. Deputy Remembrancer.

The Court also ordered the deputy to tax the said plaintiffs their costs at law, but no costs in equity on either side; the costs of reference to be reserved until after the account should be taken.

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MACDONALD, *Chief Baron*.
HOTHAM, *Baron*.
PERRY, *Baron*.

LYGON and Another *against* STRUTT and Others.

TRIN. TERM,
35. GEO. 3.

Derbyshire, 11th July 1795.

THE bill stated, that the plaintiff *W. Lygon* was the impropriator or rector of the parish of *Duffield*, in the county of *Derby*; that within the said rectory or parish there were several townships, districts, villages, hamlets, and liberties, particularly the several townships and liberties of *Duffield*, *Belper*, *Harlewood*, and *Makeney*; that before the inclosure and division which had lately taken place under or in pursuance of a certain act of parliament, there were certain commons or waste lands within the said parish commonly called *Belper Ward* (a) and *Chevin Ward*, and certain waste lands within the said liberties of *Duffield*, *Belper*, *Harlewood*, and *Makeney*, containing one thousand five hundred acres; that on the said commons and waste lands called *Belper Ward*, the several owners or occupiers of houses and lands therein, before such inclosure took place, always had and enjoyed a right of common for sheep and other commonable cattle, in respect of their several houses, lands, or ground within such township; that on the other commons or wastes called *Chevin Ward*, the several owners and occupiers of houses and lands within said townships and liberties of *Duffield*, *Harlewood*, and *Makeney*, before such inclosures, always had or enjoyed a right of common for sheep and other commonable cattle, in respect of the several houses, lands, or grounds within the said several town-

The plaintiff, as impropriator of *Duffield*, in *Derbyshire*, states, that there were two commons called *Belper Ward* and *Chevin Ward* in the parish; and also extensive waste lands in the hamlets of *Duffield*, *Belper*, *Harlewood*, and *Makeney*; that the occupiers of lands in the hamlet of *Belper* had a right of common on *Belper Ward*; that the occupiers of lands in the hamlets of *Duffield*, *Harlewood*, and *Makeney*, have a right of common on *Chevin Ward*.

(a) *Lygon*, the present impropriator of *Duffield*, and his lessees of the rectory, filed a bill in this court against *Mills*, an occupier of lands called *Whitmore*, *Spencer Ward*, the Common Grounds, and other lands in the Liberty of *Belper*; *John Barber*, another occupier of lands in the said liberty; and *T. Davenport*, as the lessee of the crown of the tithes of the three wards called *Belper Ward*, *Chevin Ward*, and *Holland Ward*, into which the ancient forest called *Duffield Frith*, parcel of the duchy of *Lancaster*, but then disafforested, had been divided. The defendants contended, that the said forest was extra-parochial, and that the tithes thereof, as an extra-parochial

place, belonging to the crown, had been leased by the crown to the defendant *Davenport*. The cause came on to be heard on the twenty-fourth of *January* 1744, *Hilary Term*, 18. *Geo. 2.* when the court dismissed the bill as against the attorney-general, who was made a party, and who admitted the lease to *Davenport*, and claimed the reversionary interest in the said tithes for the crown, but without costs; and the other defendants were ordered to account with and satisfy the plaintiffs for all the titheable matters and things demanded by the bill, which had arisen on the lands in their respective occupations.

ships;

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that the tithes arising in the hamlet of *Harlewood*, and in certain parts of the hamlet of *Belper*, belong to *T. Gisborne*; that the tithes of the hamlets of *Duffield*, *Makeney*, and the other parts of *Belper*, belong to *W. Lygon*, as impropiator of the parish; that in 1786, *Belper Ward*, *Chevin Ward*, and the waste lands, were directed to be inclosed under an act of parliament;

that certain allotments thereof were made to those persons who were entitled to rights of common thereon; that allotments were made to the defendants; that they had also purchased several of the lands which had been allotted to other occupiers;

that they had cultivated the said lands, and since the year 1790 had had several titheable matters thereon;

ships; that the plaintiff *Lygon*, as impropiator of the parish, was well entitled to the great and small tithes yearly arising therein, and in the titheable places thereof, except the tithes which had yearly arisen and become payable within those parts of the parish which lie within the said liberty of *Harlewood*, and certain parts of the liberty of *Belper*; that the said last-mentioned tithes belonged to the plaintiff *T. Gisborne*, by virtue of a grant made of such portion of tithes by some of *Lygon's* ancestors, who were impropiators of the parish; that all the said tithes had been duly paid to the plaintiffs respectively, according to their several proportions and rights therein; that about the year 1786, an act of parliament was passed, with the previous consent of all or most of the proprietors or owners of lands in the parish, having or claiming a right of common on *Belper Ward* and *Chevin Ward*, intitled, "An Act for dividing and inclosing certain Commons called *Belper Ward* and *Chevin Ward*, in the county of *Derby*, and certain Waste Lands within the Liberties of *Duffield*, *Belper*, *Harlewood*, and *Makeney*, within the Parish of *Duffield*;" whereby the commissioners therein named were directed, after appropriating part of the said commons or wastes for certain purposes therein mentioned, to set out and allot the residue thereof to and amongst all and every the owners and proprietors of messuages, cottages, tofts, lands, tenements, and hereditaments, having a right and interest in such commons or waste grounds respectively, in fair and equal proportions, according to their respective rights, proportions, and interests therein; that some time after passing the act, the commissioners, or a competent part of them, proceeded to carry the purposes of the said act into execution, and in particular set out and allotted such commons and waste grounds unto and amongst the several owners of houses and lands within the aforesaid liberties; that all the defendants were, before and at the time of making such allotments, owners and occupiers of messuages, farms, and lands within the said parish; that particularly the defendants *Strutt*, *Rogers*, *Millington*, and *Linam*, had, since the passing the said act and the making such allotments, purchased or taken to farm several of such allotments of other people who were owners of land or farms in the parish, and they, and those under whom they claimed, had used and enjoyed right of common upon the said commons and waste lands so directed, allotted, and inclosed from time immemorial before the division thereof; that the said defendants had also had allotted to them by virtue of the said act, in lieu of their rights of common in respect of their several messuages, &c. and had ever since the said division been owners or occupiers of several pieces of commons and waste lands so allotted and had cultivated the same; that in the year 1790 they had grown thereon wheat, barley, oats, hay, potatoes, and other titheable matters and things, without setting out the tithe thereof, or making the plaintiffs any satisfaction for same; that they

they had fed, depastured, and kept in and upon their said allotments, during the said year, oxen, beasts, horses, colts, barren and unprofitable cattle, sheep, and lambs, from which they had wool without setting out, rendering, or paying to the plaintiffs the tithes of such wool and lambs, or making them any satisfaction for the same, or for the herbage or agistment of such oxen, beasts, horses, colts, and other barren and unprofitable cattle, sheep and lambs so fed and depastured by them on their said allotments, and which they ought to have done; that the plaintiffs had entered into an agreement as to their part or proportion of the said tithes for the said year, as they were respectively to receive as and for his or their part or proportion of the tithes; that they had caused the same to be represented to the defendants; that they had made frequent applications to them to account for their several titheable matters aforesaid, and to pay them what should appear to be due thereon; but that they had, under various pretences, refused so to do. The plaintiffs then charged, that by virtue of certain letters-patent of *James the First*, dated the fourth of *February*, in the fourth year of his reign, they, and those under whom they claimed, became well entitled to the said rectory, and to all the tithes of corn, grain, hay, agistment, and other tithes yearly arising therein, and to all such rights and interests whatsoever as his said majesty had or was entitled to therein; that not only the said commons and lands respectively so divided and inclosed under the said act of parliament before the division and inclosure thereof, and also the several allotments thereof since such division and inclosure, and various other pieces or parcels of land which formerly or late belonged, and which had been separated from the same by encroachments or otherwise, but also such parts of the second wards so allotted or appropriated to *King Charles*, if any such appropriation was ever made, were and had been generally reputed by several ancient persons then living and others who were dead, and who were of considerable ages when they respectively died, to be within and parcel of the said rectory and parish; that the boundaries of the parish having been annually perambulated by some of the parishioners, the whole of the said wards were always included in such perambulations as being within the parish; that before such division and inclosure so took place, the said commons and wastes so divided and inclosed were generally depastured with oxen, beasts, horses, colts, and other barren and unprofitable cattle, and also with sheep and lambs belonging to the several owners and occupiers of houses, cottages, and inclosed lands or grounds within the said parish, as having a right of common or some right of the kind thereon, and particularly of the said defendants respectively; that all tithes arising from the same had, from time immemorial, been received by the rectors of the rectory, their lessees, farmers, or agents, or some satisfaction

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that the plaintiffs *Lygon* and *Gisborne* had adjusted the portions of tithes to which they were respectively entitled;

but that the defendants had refused to pay the tithes of the said allotted lands; that they claim the said tithes under a grant of the rectory from *James the First*; that the land so inclosed and allotted had always paid tithes;

that they were parcel of the parish;

and had always been included in the perambulation thereof; that they were the lands of which the occupiers, before the inclosure, enjoyed a right of common;

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against
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AND OTHERS.

that they had
been rated to the
parish;

that in an infor-
mation, the ju-
ry had found
that *Belper Ward*
and *Chevin Ward*
were within the
parish;

that the said
ward had also
been decreed to
be therein;

faction for the same in money in respect of such sheep and lambs, and of the herbage or agistment of such oxen, beasts, horses, colts, and other barren and unprofitable cattle; that as further evidence of the said commons and waste lands so divided and inclosed as aforesaid being within the said rectory and parish, the several parcels of ground, which had been so separated therefrom by such encroachments, had, since the separation thereof, produced annually corn, grain, and other titheable matters, the tithes of which, or some satisfaction for them, had been constantly paid to the rectors and owners of the rectory and tithes; that the persons possessing or occupying such parcels of land, and particularly the defendants, or those under whom they claimed, had constantly been rated or assessed in respect thereof towards the common burthens of the parish; that they had likewise always performed parochial duties or services in respect thereof; that the said defendants having a right of common on the said commons and waste lands before the division and inclosure thereof, had likewise been rated and assessed towards the common burdens of the said parish, in respect of such right of common, as appurtenant to the several and respective farms within the rectory and parish, as being part of such farms, or otherwise increasing the value thereof respectively. The bill then charged, that the information exhibited against *Reginald Lygon*, by his majesty's attorney-general, at the relation of *P. Davenport*, as having intruded himself into his majesty's possessions by receiving the tithes not only of *Holland Ward* but also of *Belper Ward* and *Chevin Ward*, prayed, that the said relator might be quieted in the enjoyment of the tithes of the said *three wards*, and that the defendant might account for the tithe received by him, and pay to the use of his majesty so much as had been received before the commencement of the relator's lease (which had long since determined), and to the relator so much as had been received since the commencement thereof; that the part of *Belper Ward* and *Chevin Ward*, being within the parish of *Duffield*, was put in issue, and after the examination of many witnesses, the information was, with respect to all the matters therein relating to the said two wards, dismissed. The bill then further charged, that *R. Lygon*, as impropriate rector of the rectory, and others claiming under him as lessees, exhibited their bill in this court, in which his majesty's attorney general, *P. Davenport*, and certain persons occupying lands in *Belper Ward*, were defendants for the purpose of establishing the right of the said *R. Lygon* as such rector, and those claiming under him, to the tithes of those lands; that in the said suit, the fact of their being within the said rectory and parish was likewise in issue; and after examination of witnesses, it was decreed that the defendants, the occupiers of the said lands, should account for and pay the titheable matters arising from the lands claimed by them to the said

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complainants, with costs. The bill then further stated, that the tithes not only of the said commons and waste lands so inclosed by virtue of the said act of parliament, but also of the rest of the lands constituting the said two wards called *Belper Ward* and *Chevin Ward*, had been constantly paid to the rectors of the said rectory, and those claiming under them; that notwithstanding which, his majesty's attorney-general, on the behalf his majesty, claimed to have some right or interest to the tithes so claimed by plaintiffs; that in order to remove any pretence for not accounting for and paying to the plaintiffs the tithes of the titheable matters they actually entered into such agreement, and gave notice thereof to the said defendants, and offered to indemnify them in the premises, on their duly accounting for and paying to them respectively the tithes of the several titheable matters aforesaid, according to the said agreement, but which they refused to do. The bill therefore prayed, that the defendants the occupiers might come to a just and fair account with the plaintiffs for *the single value* of the tithes which had arisen upon their several allotments of the said commons and waste lands so occupied by them respectively, and pay according to the respective rights and proportions settled between the plaintiffs by the said agreement in this behalf; the said plaintiffs thereby submitting to indemnify them touching the premises in such manner as the court should direct.

The defendants *T. Rogers, S. Linam, J. Strutt, D. Norman, J. Melbourne, and T. Millington* said, that previous to and in the ninth year of the reign of *Charles the First*, there was a certain forest situate near the parish of *Duffield*, called and known by the name of *the Forest of Duffield*, or *Duffield Firth*, and which was then, and for many years before, or the greater part thereof, divided into several wards respectively called by the names of *Belper Ward*, otherwise *Bean Reper Ward*, *Chevin Ward*, and *Holland Ward*, otherwise *Hollin Ward*. That the owners and occupiers of lands within the townships or liberties of *Belper, Duffield, Hazlewood, and Madeney*, were entitled to and had immemorially enjoyed a *right of common* for all their sheep and other commonable cattle upon *the Forest of Duffield*, and particularly in *Belper Ward* and *Chevin Ward*; that *Charles the First* was seised in his *demesne* in right of his *Duchy of Lancaster*, or in right of his crown, or both or one of them, of *the Forest of Duffield* so divided, together with all and all manner of tithes arising or accruing within, upon, or out of the same, and particularly the said two wards called *Belper Ward* and *Chevin Ward*, subject to such right of common as the commoners had thereon; that the whole of *the Forest of Duffield* was and had ever been *extra parochial*, and not within the rectory or parish of *Duffield*, or the titheable places thereof, or a part of any other parish; that a decree was made the twenty-first of *November*, in the ninth year of *Charles the First*, in THE DUCHY COURT OF LAN-

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but that although *Belper Ward* and *Chevin Ward* had constantly paid tithes, before the inclosure, to the proprietor of *Duffield*, the king now claimed some interest therein.

The bill prayed an account of the tithes which had arisen on the said allotments in the possession of the defendants, and payment.

The defendants say, that in the reign of *Charles the First* there was a royal and extra-parochial forest called *the Forest of Duffield*, which was divided into three wards called *Holland Ward, Belper Ward, and Chevin Ward*; that the occupiers of land in the hamlets of *Belper, Duffield, Hazlewood, and Madeney*, had right of common in the said forest.

that no part of the said forest was within the parish of *Duffield*, or any other parish;

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that *Charles the First* granted two third parts of the said three wards to certain persons, in pursuance of a decree in the duchy court;

that the other third part was allotted to the king in lieu of his right to the whole forest and the tithes thereof;

that the persons, having a right of common to the two-third parts, enjoyed the same tithe free;

that no tithes whatever had been paid for the same;

CASTER, in a cause between his majesty's attorney-general of the said duchy, on behalf of his majesty informant, and *the Earl of Newcastle* and others defendants, respecting the said *Forest of Duffield*; that in pursuance of the said decree *Charles the First*, by letters-patent under the seal of THE DUCHY OF LANCASTER, dated the second of *September*, in the tenth year of his reign, granted to certain persons therein, and in the said decree named, two third parts of the said three several wards, and all cottages and buildings thereon, together with the rights, jurisdictions, and appurtenances thereunto belonging, as fully and freely, and in as ample manner as the same had come to his majesty's hands, except his fishery of the rivers *Dervent* and *Ecclebourne*, and the advowson and right of presentation to all rectories, vicarages, chapels, and other ecclesiastical benefices to the premises thereby granted, or any part thereof, relating or appendant, to hold according to the intent of the said decree; that the other third part of the said three wards was duly set out and allotted to *Charles the First*, and that he received and accepted the same in full compensation and satisfaction of his entire and whole right in *the Forest of Duffield*, and the tithes arising upon the said other two-third parts thereof; that the said several rights of his said majesty, and of the commoners in and upon the said three wards, were at that time known and duly considered, and had in full contemplation; that the said one-third part of the said three wards, so allotted to *Charles the First* in consequence of the said decree, was a full satisfaction for his right and interest not only to the soil but also to the tithes of the other two-third parts of the said wards called *Holland Ward*, *Belper Ward*, and *Chevin Ward*; that several persons, having a right of common to the said two-third parts of the said wards comprized in the said letters-patent, had used and enjoyed such right of common for all their commonable cattle without paying any tithe whatsoever, or any having been demanded until the year 1771; that in the said year *Hollin Ward* was inclosed pursuant to act of parliament; that in the year 1786 an act of parliament passed for dividing and inclosing *Belper Ward* and *Chevin Ward*, &c. and such allotments were made as in the bill stated; and they insisted, that the said two-thirds of the said ward were free and exempted from the payment of any tithes, and particularly as mentioned in the said decree in the duchy court; and also that no tithes whatsoever had been paid for the remaining two parts of *Hollin Ward* since the inclosure thereof in 1771; that they hoped to have the same benefit thereof as if they had pleaded the same in bar to the bill, and the discovery and relief thereby prayed. They admitted, that the plaintiff *William Lygon* had been for many years past and then was impropriator of *Duffield*; that there were several townships, districts, villages, hamlets, and liberties within the said parish, as stated in the bill; that the said commons or wards comprised one thousand five hundred acres; that the several owners and occupiers of houses and lands within the townships of *Belper* and *Chevin*

Chevin before such inclosure took place always had or enjoyed a right of common for sheep and other commonable cattle in respect of their several houses, &c. They also said, that *W. Lygon*, as impropriator, might be entitled to the great and small tithes of such parts of the parish as were titheable, except as to such portion as *T. Gisborne* might be entitled to, and that such tithes might have been duly paid to them. They admitted, that before the inclosures and allotments under the statute of 24. Geo. 3. were made, the several owners or occupiers of lands in the parish of *Duffield* had purchased or taken to farm several of such allotments from the persons to whom they were made, and that they and those under whom they claimed had respectively used and enjoyed a *right of common* in and upon the lands comprized in the said act, and so allotted, from time immemorial before the allotting thereof. They also admitted, that they had respectively several considerable parcels of the said lands allotted to them under the said act in lieu of their respective rights of common in and upon the whole of such lands, in respect of their said several messuages, farms, and lands in the parish, and that they had cultivated such parts as were allotted to them, and had had from the same divers titheable matters and things without setting out any tithes thereof, or making the plaintiffs any satisfaction for the same, as they believed that no tithes were due or payable, and therefore were not bound to set forth the same, or any account of them, which they had upon their allotments in 1790, or of the quantities, kinds, and values thereof; but they said, that in case the plaintiffs should be able to establish any right to the tithes of all or any of such matters and things, they were ready and willing to account for the same in such manner as the court should direct. They further said, that they were strangers to the agreement entered into between the plaintiffs; but they admitted, that they had caused it to be represented to them that the same had been made, and that such application for such purposes as stated in bill to have made to them had been made, and which they had refused to comply with, the plaintiffs not being entitled to any tithes in respect of the allotments of the said commons and lands in their occupation; and they insisted, that such allotments were respectively exempted from the payment of tithes. They denied, that the commons or wards called *Belper Ward* and *Chevin Ward*. comprized in 24. Geo. 3. or any part thereof, were or was before the division or inclosure thereof under the said act, or that the allotments thereof since such inclosure, or any other pieces of land which formerly belonged thereto, and had been separated from the same by encroachments, were generally reputed by ancient persons then living, and others who were then dead, and were of considerable ages when they died, to be within or parcel of the parish; but they admitted, that before such inclosure took place, the premises so inclosed, and which were

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that the plaintiff might be entitled to the tithes of such parts of the parish as were titheable;

that the allotments, as directed in the bill, had been made to them;

that they had had titheable matters therein;

that the agreement between the plaintiffs respecting their portion of tithes had been communicated to them;

that no part of *Belper Ward* or *Chevin Ward*, or any lands separated by encroachment therefrom, had ever been reputed parcel of the parish of *Duffield*;

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that the tithes of
agisting cattle on
the said common
had never to
their knowledge
been paid;

that the tithes of
the piece of land
which had been
taken by en-
croachment from
the said com-
mon, had been
paid by poor per-
sons, and had
been refused by
others;

that the owner
of such encroach-
ments had not
to their know-
ledge been rated
for the same to
the parish;

that the grant of
the rectory by
James the First
did not entitle
the grantees to
all the rights the
grantor had
therein;

comprized in the said act, were generally depastured with oxen, beasts, horses, colts, and other barren and unprofitable cattle, and also with sheep and lambs belonging to the several owners and occupiers of houses, cottages, and inclosed lands or grounds within the said parish, as having a right of common or some right of the kind thereon. They denied, that they had ever heard, save by the bill, that the tithes of wool and lambs, and the tithes of herbage or agistment, or of any of such oxen, beasts, horses, colts, and other barren and unprofitable cattle, had from time immemorial, or at any time been received by the rectors of the said rectory, their lessees, farmers, or agents, or that any composition or satisfaction was ever made to them or any of them for the tithes of any such last-mentioned matters and thing: arising from the said commons called *Belper Ward* and *Chewin Ward*, distinct and separate from the tithes arising from the ancient inclosed lands within the parish of *Duffield*, and save that no compensation or other satisfaction had ever been made to the plaintiffs exceeding the value of the tithes arising from such ancient inclosed lands, and denied that it so appeared from any receipts or acquittances, or written discharges in the custody of any of the defendants. They admitted, that the several parcels of ground which had been separated from the said commons or wards and premises comprized in the said act, by encroachments, had, since the separation thereof, produced annually corn, grain, and other matters; and said, that the tithes of all or some of the matters produced on some of such encroachments, or some compensation for the same, might have been paid to the rectors or owners of the said rectory, but that some persons had refused the same, and that if any had been paid they had been paid by distressed persons who were unable to contest the payment thereof, as the said defendants conceived that the last-mentioned lands were exempt from the payment of any tithes, and therefore insisted that such payments ought not to be received as evidence of the plaintiff's right to the tithes of the aforesaid commons and wastes comprized in said act of parliament, and particularly the parts thereof which had been allotted to them. They denied that, to their knowledge, save by the bill, the owners or occupiers of such encroachments had been rated or assessed in respect thereof, or had performed any parochial duties or services in respect thereof, or that the defendants, or any other person, having a right of common on the said commons or wards and lands comprized in the said act of parliament, had been so rated or assessed in respect of such right of common appurtenant to their several and respective farms or lands, and increasing the value thereof or otherwise in respect of such right of common. They said, that they did not admit that the plaintiffs, or those under whom they claimed, did by virtue of or under the grant or letters-patent of *James the First*, dated the fourth day of *February*, in the fourth year of

of his reign, become in any manner entitled to the rectory, and to all the tithes of corn, grain, hay, agistment, and other tithes yearly arising within the said parish and rectory, or to all such right and interest whatsoever which his said late majesty had or was entitled to therein. They further said, that they did not admit that the commons and lands respectively divided and inclosed under the said act were, before the division or inclosure thereof, or that any of the allotments thereof since the division and inclosure, or any pieces or parcels of land which formerly or late belonged to, and which had been separated therefrom by encroachments or otherwise, had been generally reputed, or that any parts or particulars of the two ancient wards which were allotted to *Charles the First* were or had been generally reputed by any ancient persons then living, or others who were then dead, to be within or parcel of the rectory and parish of *Duffield*, or that the whole of the said wards had been included in the perambulation made for the purpose of ascertaining and perpetuating the boundaries of the said parish of *Duffield* as being within the said parish. They also said, that they did admit that the information exhibited in the duchy court aforesaid was dismissed upon the hearing thereof, with respect to all matters therein contained respecting the claim of tithes of *Belper Ward* and *Chevin Ward*; but insisted, that such dismissal was not ordered or decreed upon the merits respecting the question of the right or claim of the informant or relator to the tithes of the said two wards, but by consent and agreement between the parties; and therefore they insisted and submitted that the dismissal of the said suit, so far as it related to the claim thereby made to the tithes of the said two wards, ought not to be received or considered as any evidence in favour or support of the right or claim set up by plaintiffs by their bill, or in prejudice of the defence set up by defendants in opposition thereto. They said, that they were strangers to the other suit mentioned in said bill; and that they knew not that the tithes of the commons or waste lands inclosed by virtue of said act of parliament, and situated within the said two wards, had been ever paid to any rectors or rector of the parish of *Duffield* for the time being, or to any person or persons claiming under them or him.

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that no part of the allotted lands were reputed to be parcel of the two wards allotted to *Charles the First*;

that the verdict given on the trial of the information did not prove that *Belper Ward* and *Chevin Ward* were within the parish;

The attorney-general, on the behalf of his majesty, said, that he was a stranger to the matters and things in the bill contained, and left the plaintiffs to prove the same as they could; and insisted upon and claimed all such right and interest in the premises in the bill mentioned as it should appear his majesty, in right of his duchy of *Lancaster* or otherwise, was entitled to; and he submitted the same to the judgment of the court, and prayed that the Court would take care of his majesty's right and interest in the premises.

The attorney-general claims such right and interest as the king may appear to have in the premises.

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The cause
heard.

The plaintiffs replied ; the defendants rejoined ; and the cause being at issue, divers witnesses were examined on both sides ; and publication being duly passed, the cause came to be heard on the twenty-seventh day of *April* 1795, and the several following days ; and upon hearing counsel for both sides ; and reading the following evidence on behalf of the plaintiffs, viz. the answers of the defendants, the owners and occupiers, and the depositions of several witnesses to the several interrogatories exhibited to them in this cause ; and also their cross examinations ; an act for dividing and inclosing certain commons and waste grounds called *Belper Ward* and *Chevin Ward*, in the parish of *Duffield*, in the county of *Derby* ; an act of parliament made in the year 1769 for dividing and inclosing that part or share of *Belper Ward* which belongeth to *Highb Hedge*, in the county of *Derby* ; a parliamentary survey in the year 1651 ; a survey from the *Duchy Court of Lancaster*, intitled, “ A survey “ of her Majesty’s Wards in the Counties of *Stafford* and “ *Derby*, taken in the twenty-ninth Year of the Reign of “ *Queen Elizabeth*, pages 63 and 64 ;” and upon reading the following evidence on the part of the defendants, the owners and occupiers, viz. an office copy of a grant of appropriation of the church of *Duffield*, to the *Hospital of Saint Mary* in *Leicester*, dated the twenty-third of *March*, in the fifth year of *Edward the Third* ; the copy of a wardmote from the duchy office of *Duffield Parish*, dated the fourteenth of *November*, in the ninth year of *Henry the Fourth* ; an office copy of an ecclesiastical survey taken pursuant to an act of parliament of the twenty-seventh year of *Henry the Eighth* ; an office copy of a certificate of the college of *Newark* at *Leicester*, in the thirty-seventh year of *Henry the Eighth* ; an office copy of a grant of the fourth year of *James the First*, to *Henry Butler* and *Henry Ogle* ; a commission dated the twenty-seventh of *March*, in the ninth year of *Charles the First*, and the report of the commissioners thereon, dated the twentieth of *September* 1633 ; a survey of the *Canny Grey House* in *Duffield*, dated in 1651 ; and an office copy of a grant, dated the second of *September*, in the tenth year of *Charles the First* ; a manuscript, dated the fifth of *November* 1613, signed *Anthony Bradshaw*, offered to be read for the defendants, but objected to by plaintiff’s counsel, and defendant’s counsel heard in support of the evidence, and the objection allowed ; an act of parliament made in the year 1771 for inclosing *Holland Ward* ; an office copy of an information filed in the duchy court by the attorney general of the *Duchy of Lancaster* against *Richard Broom*, and the answers of the defendants thereto ; extracts from *Workworth Register* from the year 1756 to 1764 ; and extracts from *Mugginton Register* from the year 1769 to 1785 ; an office copy of a grant, dated the fourth of *February*, in the fourth year of *James the First*, to *Henry Butler* and *Henry Ogle* ; extracts from the parliamentary survey

taken

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taken in pursuance of an act of parliament of the twenty-sixth year of *Henry the Eighth*; an inquisition *post mortem* of *Edmund, Earl of Lancaster*, taken in the twenty-fifth year of *King Edward the First*; an extent, dated in *September*, in the third year of *Richard the Second*; also a register book of the *Priory of Tuttebury* produced by *F. Townsend, Esquire*, *Windfor Herald*, read in evidence by consent (a) of the plaintiff's counsel, viz. No. 51, intituled, "*Prima fundacis Ecclesie de Tuttesbur*;" No. 52, intituled, "*Carta Robesti Comitis Junioris de Ferrers*;" No. 30, intituled, "*Carta Galfridi Coveti Epi per Ecclys de Dubbrig de Miflon et Tuttesbur*." No. 57, intituled, "*Carta Willmi de Ferr Comitis per toto Exitu de tota Foresta de Duffield*;" No. 16, intituled, "*Confirmacio Coveti et Lich. Epi per X libris Ecclesie de Duffield*;" No. 17, intituled, "*Confirmacio Willmi Decani et Capiti Lich B. H. libris Ecclesie de Duffield*;" No. 18, intituled, "*Confirmacio W. Prioris et Covetus Covetr. P. X. libris de Eccle de Duffield*;" No. 267, intituled, "*Sententia contra Rectorem Ecclesie de Duffield*." No. 4, intituled, "*Sententia contra Rectorem Ecclesie de Duffield*;" No. 37, intituled, "*Sententia cujusdem Executio contra Rectorem Ecclesie de Duffield*;" No. 99, intituled, "*Inqseio Capta X decimis de Duffield Frythe*;" a certificate of the deputy auditor of the *Duchy of Lancaster*, dated the twenty-second of *November* 1667; an order, dated the twenty-third of *November* 1637, to prepare a lease to *Edmund Sydenham*; a lease dated the twenty-fourth of *November*, in the thirteenth year of *Charles the First*, from that king to *Edward Sydenham*; a lease dated the twenty-third of *December*, in the twentieth year of *Charles the Second*, from that king to *Ralph Bagnam*; a lease dated the second of *July*, in the twenty-fifth year of *Charles the Second*, from that king to *Sir John Curzon*; another dated the twenty-eighth of *February* 1699, from *King William* to *Sir Nathaniel Curzon*; another dated the tenth of *April*, in the twelfth year of *George the Second*, from that king to *Peter Davenport, Esquire*; another dated the thirtieth of *July* 1768, from *King George the Third* to *Lords George Henry and Frederick Cavendish*; another dated the third of *May* 1775, from the same king to *Lord Scarfsdale*; and another dated the seventh of *May* 1776, with an assignment from *Lord Scarfsdale* and *Richard Broom*; an office copy of a decree made in *Michaelmas Term*, in the ninth year of *Charles the First*, in a cause wherein the attorney-general of the duchy was informant, and *the Duke of Newcastle* was defendant; the office copy of a bill in THE DUCHY COURT, in a cause between the attorney general at the relation of *Davenport* and *Lygon*, and the answer of the defendant thereto, and the depositions of several witnesses taken in the said cause on the part of the defendants; a book, being *the vicar's Easter Roll* for

(a) See *Lygon v. Strutt*, *Anstr. Rep.* 601.

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the parish of *Duffield* in 1704, read in evidence for the plaintiffs; the decree in the same cause of *Lygon v. Davenport*, dated the twenty-eighth of *January* 1744; an entry from *Doomsday Book*, under the title "*Terra Henrici de Ferraris*;" a decree of the Court of Exchequer at *Westminster*, in a cause between the attorney general against *Poole*, and others dated the sixteenth of *June* 1660; other depositions of witnesses taken in this cause; the deposition of *Samuel Lane* being offered to be read to the sixth and twentieth interrogatories was objected by the plaintiff's counsel; but the objection was over-ruled, and the depositions read; and upon hearing the plaintiff's counsel, the further evidence was read on the part of the said plaintiffs, viz. a register book of the *Priory of Tuttsbury*, produced from THE HERALD'S OFFICE, and the following entries were read therefrom by consent, viz. No. 1, "*Carta Willmi de Ferr. Comitis pro toto Exitu de tota Foresta de Duffield*;" an inquisition in 1367—in page 158 of the above-mentioned book; minister's accounts from the *Augmentation Office*; an account of the thirty-fourth year of *Henry the Eighth* of the *Priory of Tuttsbury*; a certificate of the commissioners upon the dissolution of monasteries in the thirty-seventh year of *Henry the Eighth*; minister's account of the fourth year of *Edward the Sixth*; also an order made at the quarter sessions at *Derby* the fourth of *October* 1719; an original and amended bill filed in the Court of Exchequer in *Trinity Term*, in the thirteenth year of the reign of *George the Second*, by *Reginald Lygon* and others against *Mills* and others; the answers thereto; the depositions taken in the said cause; the decree nisi made in the said cause, dated the twenty-fourth of *January* 1744, and the decree absolute the second of *May* 1745; an act of parliament passed in the year 1769, for inclosing that part or share of *Belper Ward* which belongs to *High Hedge*; the depositions taken in a cause in THE DUCHY COURT OF LANCASTER, between the attorney-general of the duchy at the relation of *Peter Davenport* against *Lygon* and others; the depositions taken in the cause of *Lygon v. Mills*, and several depositions taken in this on the part of the said plaintiffs; a letter signed *J. Leaper, Charles Upton*, dated the sixth of *February* 1786, inclosing proposals to *William Lygon, Esquire*, of the intended inclosure of *Belper Ward* and *Chevin Ward*, and the said proposals read; another letter signed *Charles Upton*, dated the third of *May* 1786, addressed to *William Lygon, Esquire*; office copy of a lease from the duchy court of *Lancaster*, by *Queen Elizabeth* to *Jeronius Bowes*, from the eleventh to the thirteenth year of her reign of the rectory of *Duffield*; and also on reading from the *Tuttsbury Register*, intitled, "*Maneria Prioratus*;" and upon hearing the reply upon the part of the defendants on the fifteenth day of *May* last, this cause was further adjourned for the judgment of the court until this day; when

THE

THE COURT ordered the deputy to take an account (a) of what was due to the plaintiffs from the defendants the owners and occupiers respectively, for and in respect of the value of the tithes of all such titheable matters and things as had arisen upon their said several allotments of the said commons and waste lands in the pleadings of this cause mentioned; particularly an account of the tithes of corn, grain, hay, wool, lambs, and potatoes, and of the tithes of the herbage or agistment of such oxen, beasts, horses, colts, and other barren and unprofitable cattle, sheep, and lambs, as aforesaid, kept, fed, and depastured by the said defendants respectively on the several allotments so occupied by them respectively as aforesaid.

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The tithes of the several allotments of land of the said waste grounds and commons, decreed as demanded by the bill,

THE COURT further ordered the defendants to pay the said plaintiffs their costs of this suit to this time; and that the subsequent costs of this suit, with the costs of his majesty's attorney general; and all further directions touching the said account to be reserved until after the report.

with costs.

MACDONALD, *Chief Baron.*
HOTHAM, *Baron.*
THOMSON, *Baron.*

(a) See S. C. Lygon v. Strutt, Anstr. Rep. 602.

THE DUKE OF BOLTON *against* KINGSMILL.

Hampshire, 10th November 1795.

MICH. TERM,
16. GEO. 3.

THE bill stated, that the plaintiff *Harry Poulet, Duke of Bolton*, had, for six years past, been seised in his *demesne as of freehold*, for the term of his life, of the great tithes arising in the chapelries, townships, hamlets, and vills of *Sidmontaine* and *Echimswell*, in the parish of *Kingsclere*, in the county of *Hants*, as parcel of the impropriate rectory of *Kingsclere*; and that he was, for part of the said time, entitled to the tithes of corn, grain, hay, and other great tithes, arising on all the capital farms in the occupation of the defendant *Kingmill*; on the lands in the tenure of the defendants *J. Hobbs* and *J. Booth*, situated in the vills aforesaid, or one of them; that the plaintiff *Jean Mary Poulet* was seised of the tithes of the said farms, as tenant in tail in remainder, expectant upon the death of the *Duke of Bolton*; that the defendants, during the said time, had reaped from their said lands wheat, barley, oats, pease, beans, hay, grass, and clover, in the years 1789 and 1790, but had refused to pay the tithes thereof, or to make a satisfaction for the same. The bill therefore prayed an account and payment thereof.

The impropriator of the great tithes of the parish of *Kingsclere*, in *Hampshire*, claims the tithes arising in the hamlet of *Sidmontaine*, as parcel of the rectory.

See Hil. Term,
21. Geo. 3.

The

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BOLTON
against
KINGSMILL.

The defendants say, that the lands they hold in the hamlet of *Sidmontaine* are the *Demesne Lands* of the manor of *Sidmontaine*; that they were formerly parcel of the dissolved monastery of *Romsey*; and that the occupiers thereof had immemorially cultivated and sowed on certain parts of the said lands *one acre of wheat* and *one acre of barley* for the use of the rector of *Kingsclere*, in lieu of all great tithes, and the tithes of wool and lambs arising on the said *demefne lands*, containing seven hundred and fifty-four acres and a half;

that a *modus* of 40s. a year is payable to the vicar of *Kingsclere*, in lieu of the small tithes arising on the said lands;

that the said lands were granted by *Henry the Eighth* to the defendant's ancestor;

The defendant *R. Kingmill* admitted, he was owner of several parcels of land in the chapelry of *Sidmontaine*; and the defendants *Broth* and *Hobbs* admitted, that they rented lands of *Kingmill*; and they insisted, that there subsisted within the chapelry or township of *Sidmontaine* an immemorial custom, that the occupier or occupiers of the lands in the said defendants answer mentioned, the property of the defendant *R. Kingmill*, and in the occupation of the said defendants and *John Bassett* respectively, and which contained in the whole seven hundred and fifty-four acres and an half, or thereabouts, or some or one of such occupiers (in case of there being more occupiers than one) on behalf of himself and the other occupier or occupiers, should, in each and every year, at his or their own costs and charges, cultivate and sow with wheat one acre of land, part of the arable land heretofore called *the Arable Land under the Downside*, and the arable land now called *Park Field*, *Barton Field*, and in *Pounsdown*, otherwise *Pontsdown*, part or parcel of the said several quantities of land, and cultivate and sow with barley one other acre, other part or parcel of the said parcels or quantities of land, for the use and benefit of the rector of the said rectory of *Kingsclere* for the time being, or his lessee or farmer (the same to be reaped or cut and taken and carried away by or on the behalf and at the expence of the rector of the said rectory for the time being, or his lessee or farmer) for and in lieu of and full satisfaction of all tithes of corn, grain, and hay, and all other great and predial tithes, as well as the tithes of wool and lambs (a) yearly arising, growing, renewing, and increasing upon the said lands in the occupation of the defendants and the said *John Bassett*, and containing as aforesaid seven hundred and fifty-four acres and an half of land, or thereabouts; that the said custom had been practised until about fifty years ago, when the rector of the said rectory took a pecuniary satisfaction for the same,

The defendant *R. Kingmill* said, that he rented the tithes of the titheable lands in the said township of the plaintiff for ten years, at one hundred pounds a-year, up to *Michaelmas* 1788; that the said *one acre of wheat* and *one acre of barley*, or the compensation for the same, was included in the said rent; that a *modus* of forty shillings a-year was payable to the vicar of the parish, in lieu of vicarial tithes arising from the said lands (b) covered by the aforesaid custom, and of the gardens and home-steads occupied therewith; that the lands specified in the answer were and are *Demesne Lands* of the *Manor of Sidmontaine*, or appurtenant thereto; that the manor, with *the Demefne Lands* and their appurtenances, and other lands and tenements which were granted by *Henry the Eighth* to *John Kingmill* and Con-

(a) See *Kent v. Webb*, vol. 1. page 79.

(b) See *Webb v. Arnold*, vol. 1. page 102.

stantia his wife (the said defendant *R. Kingmill's* ancestors, and under whom he claimed the same), were exempted from tithes, as part of the possessions of the *Monastery of Romsey*, which was one of the greater monasteries, and came to the crown by virtue of the statute 31. *Hen.* 8.

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The defendants further said, that besides the premises in their answer mentioned to be in their occupations, they, in the years 1789 and 1790, occupied divers other lands within the said township, and also within the township or vill of *Echimswell*, all which were the property of the defendant *Kingmill*, and were set forth in their answer, except as to several pieces called *Marsh Plots*, the tithes whereof, as well as of certain coppices, were due to the vicar of the parish of *Kingclere*. They further said, that the plaintiff not being willing to grant to the defendant *R. Kingmill* a lease of the tithes which he before rented, and the said plaintiff or his agents giving notice to set out their tithes in kind, they duly set out and rendered their tithes in kind in 1789 and 1790. They further said, that for the said years they had cultivated *one acre of wheat* and *one acre of barley*; that they had reaped the same; and that the agent for *the Duke* had carried the same away for those years, and also for the year 1791. They denied, that they had subtracted the tithes of corn, grain, hay, and other great tithes, during the said years; but they admitted, that they had not made the plaintiff any satisfaction in lieu of the tithes of the said lands, containing seven hundred and fifty-four acres and an half as aforesaid, in any other way than by the said acre of wheat and acre of barley as aforesaid.

and that they had cultivated and sowed the said acre of wheat and acre of barley in the years 1789, 1790, and 1791, which the rector had reaped and carried away;

and that they had not subtracted any of the tithes due to the plaintiff.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and upon hearing counsel on both sides; and reading the depositions of *John Booth* to part of the fifth and sixth, and to the eleventh interrogatories;

The cause heard.

THE COURT ordered the bill to be dismissed with costs (a).

The bill dismissed with costs.

MACDONALD, *Chief Baron.*

PERRYN, *Baron.*

THOMSON, *Baron.*

(a) See the case of *Kent v. Webb* and others, Easter Term, 19. Car. 2. vol. 1. page 82. where an issue was directed to try the *modus* as to the acre

of wheat and acre of barley, and found accordingly.—See also *Powlet v. Bates*, vol. 3. page 466.

MICH. TERM, GILL AND HIS WIFE *against* ZOUCH and Others ;
36. GEO. 3. and five other Causes.

Yorkshire, 10th November 1795.

The lay impro-
priator of the
tithes of the
township of
Sandall Magna,
in the parish of
the same name
in *Yorkshire*, is
entitled to the
agistment tithes,
the tithes of hay,
rape, rape seed,
clover, clover
seed, weld, and
other tithes a-
rising on *Town's*
End Close, *Puge-*
nel Close, and
Castlefield Close,
in the said town-
ship, in kind.

THE plaintiffs exhibited six several bills of complaint against the defendants ; but, by an order dated the fifteenth of *June* 1792, they were consolidated upon the terms therein mentioned. The bills stated, that the plaintiffs had been since the twenty-fifth of *March* 1776, and still were jointly seised in fee of part of the impropriate rectory of *Sandall Magna*, and entitled to the great and small tithes yearly arising on the several lands in the township of *Sandall Magna*, excepting those small tithes which were payable to the vicar, and particularly to the tithes of hay and agistment of dry, barren, and unprofitable cattle ; that the defendants occupied lands in the township, on which they had had hay, rape, rape seed, clover, clover seed, weld, cows not yielding milk, oxen, beasts, horses, colts, fillies, sheep, sheep for slaughter, and other barren and unprofitable cattle, the tithes of which they had refused to pay. The bill therefore prayed, that they might respectively set forth a particular account of the several parcels of ground specified and described in the bill to be in their several occupations, together with the real names of such parcels of ground respectively, and the number of acres each of them contained ; which of them, if any, were exempted from the payment of tithes in kind for hay, or any other and what tithes ; the particular ground of the exemption ; an account of all the barren and unprofitable cattle and sheep depastured by them during the said times on the said grounds in the township ; the value of agisting such cattle and sheep ; an account of all monies due from them respectively for such tithes ; an account of the tithes of hay, rape, rape seed, clover, clover seed, and weld, specified in the bill ; the tithe agistment of such cattle and sheep as aforesaid ; and pay to the plaintiffs what should, on taking such accounts, appear to be due from them respectively thereon.

The defendants said, that the lay impropriators of the rectory, or of such part thereof as laid within the township of *Sandall Magna*, were entitled to all the small tithes yearly arising therein, except the tithes of wool and lambs ; to some of the vicarial tithes of the parish ; and to some particular great tithes ; that the plaintiffs, as the owners, or as lessees of that part of the impropriate rectory which laid in the township, were entitled to all the great and small tithes yearly arising upon certain lands therein, except some particular tithes ; that they might be entitled to part of the tithes of hay, clover, clover seed, weld or wold, rape, rape seed, and agistment of dry, barren, and unprofitable cattle, yearly arising in the township ; and that such tithes, except as aforesaid,

might

might have been paid to them ; but in what particulars he could not tell.

GILL
AND HIS WIFE
against
Zouch
AND OTHERS.

The defendant *H. Zouch* said, that he was not the vicar of the parish ; that he believed the plaintiffs were lessees only of part of the tithes of the township ; that during the years 1790 and 1791 he had occupied *Town End Close*, in the said township ; that the same had been mown, and the greater part thereof made into hay ; that the said hay was eaten and consumed by his own cattle ; and that he had not set out the tithe of such hay, nor made the plaintiffs any satisfaction for the same, for that the said close was covered by a *modus* payable in respect thereof in lieu of the tithe of hay and agistment ; but that he was unable to state the particulars and nature of such *modus*, or how it was payable. He also said, that he occupied in the said township *Pugnall's Closes* and *Castlefield Close* ; that he had depastured them with horses for the plough, cows, heifers, profitable sheep, young foals, and cows fed for slaughter ; that he could not tell either the number or the value thereof ; that he had not made the plaintiffs any satisfaction for the tithes of such feeding and depasturage, for that the said closes had been part of *Grice's Farm* ; that *Grice's Farm* was covered by a *modus* in lieu of tithe agistment ; but that he could not state the particulars thereof.

The other defendants respectively set forth their several farms ; and insisted on the like *moduses* for most of the lands so held by them.

The plaintiffs replied ; the defendants rejoined ; and the cause being at issue, several witnesses were examined ; and upon hearing counsel for all parties ; and reading the several proofs taken in the cause ; and the order, dated the fifteenth day of *June* 1792, for consolidating the said causes ; and upon full debate of the matter ;

THE COURT ordered the deputy remembrancer to take an account of what was due to the plaintiffs from the several defendants (except the defendants *H. Zouch*, *T. Hewitson*, *T. Burgh*, and *R. Lee*, who were dead) for the tithes of all their barren and unprofitable cattle and sheep which, during the time demanded by the bill, had been fed on the several parcels of ground in the pleadings mentioned ; of the tithes of hay, rape, rape seed, clover, clover seed, and weld ; and of the tithes of herbage and agistment of such cattle and sheep so due to the said plaintiffs, as impropriators of the township aforesaid ; and the several defendants to pay what should be found due thereon ; with costs of this suit to this time to be taxed.

The deputy made his report, dated the ninth of *December* 1796 ; and on the twelfth, no counsel appearing for the defendants, it was confirmed with costs, and the defendants ordered

GILL
AND HIS WIFE
against
ZOUCH
AND OTHERS.

dered to pay the several sums reported due from them respectively, together with the costs already taxed (a).

MACDONALD, *Chief Baron*.
HOTHAM, *Baron*.
THOMSON, *Baron*.

(a) See Wood v. Beaumont, vol. 1. page 440. ; Taylor v. Beaumont, vol. page 216 ; Lambert v. Smith, vol. 2. 3. page 401.
page 436. ; Lambert v. Zouch, vol. 2.

MICH. TERM,
35. GEO. 3.

ORD against CLARKE and Others.

Yorkshire, 25th November 1795.

The vicar of *Rothwell*, in *Yorkshire*, claims the tithe hay of the parish in kind.—S. C. Anst. Rep. 638.

The defendant admits, that the vicar is entitled to all the small tithes and other vicarial dues in the parish, except as to the ancient estate called *Rothwell Haigh Estate*, of which the messuage, out-buildings, and lands, containing sixty-one acres, that constituted his farm, were parts; and insists, that a *modus* of 8s. a year is payable at *Easter* to the vicar by the owner of *Rothwell Haigh Estate*, in lieu of the tithes of hay, clover, and artificial grasses;

The defendant *R. Clarke* admitted, that the plaintiff was vicar of *Rothwell*, and entitled to all the small tithes in kind, and all *Easter* and other offerings, oblations, obventions, and other dues and profits yearly arising therein, but not to tithe hay, or any payment in lieu thereof, save as after-mentioned; and he said, that the farm he occupied in the parish consisted of a messuage, out-building, and about sixty-one acres of land; that they were part of a certain ancient estate, called *Rothwell Haigh Estate*, belonging to *Lord Stourton*, and containing one thousand five hundred acres of arable, meadow, and pasture, exclusive of certain allotments lately made to his lordship under an inclosing act of parliament; that *Rothwell Haigh Estate*, and consequently the farm and lands so occupied by him as being part thereof, were covered, excepting only the new allotments, by a *modus* of eight shillings, payable to the vicar of the said parish, by the owner of the said estate, annually at *Easter*, in lieu of the tithes of hay, clover, and artificial grass, yearly arising on such estate; that the said *modus* had been paid to the vicar, or those claiming under him, invariably, and for time immemorial, at *Easter* in every year, in lieu of such tithes of hay, clover, and artificial grass, except probably for some short space of time when refused by the vicar, and until it had been refused by the plaintiff; that he could not state when the said *modus* had its origin; but that there were some books kept in the church or vestry-room of the parish, containing entries relating to the tithes and payments to which the vicar was entitled, in which an account of the said *modus* was set forth; and that he did not insist upon any other *modus* payable for his said farm in lieu of the vicarial tithes, save as aforesaid.

The other defendants put in a similar answer as to their farms and lands ; and set forth the quantities, qualities, and values of the titheable matters and things they respectively had thereon ; and what they had paid to the plaintiff : and they also spoke to the same purport respecting the *modus* as affecting their said farms and lands.

and be set forth the boundaries, and the titheable matters which had arisen on his said farm.

The plaintiff replied ; the defendant's rejoined ; and the cause being at issue, witnesses were examined on both sides ; and the depositions being duly published, it came on to be heard ; and upon hearing counsel for all parties ; and reading the following evidence for the plaintiff, *viz.* a parchment manuscript roll from the consistory court of the *Archbishop of York*, purporting to be, *inter alia*, a register or inrollment of divers vicarages within the province of *York*, made during the pontificate of *Walter Grey*, archbishop ; and on reading the following evidence on the part of the defendant *Clarke* ; a book, intitled, "*Easter Reconings and other Profits belonging to the Vicarage of Rothwell 1728*, collected by *Mr. Barbor*, sequestrator ;" a like book in 1729 and 1730 and 1733 ; upon hearing the plaintiff's counsel in reply ; and upon full debate of the matters ;

The cause heard.

THE COURT ordered the deputy to take an account of what was due for the tithes of hay, clover, and agistment, arising upon the farms and lands in the occupation of the said defendants respectively within the parish of *Rothwell* during the time demanded by the bill, with costs.

The tithes of hay, clover, and agistment on the defendant's farms, decreed ;

THE COURT further ordered the deputy to take an account of what was due for the several other titheable matters in the bill mentioned arising upon the defendants farms and lands in the said parish during the time demanded by the bill ; the consideration of costs as to the account last directed, and all further directions, to be reserved till the coming in of the report.

and also the several other titheable matters demanded by the bill.

MACDONALD, *Chief Baron*.
HOTHAM, *Baron*.
THOMSON, *Baron*.

TENNANT *against* WILSMORE.

MICH. TERM,
36. GEO. 3.

Suffolk, 26th November 1795.

THE vicar or perpetual curate of the donative vicarage or perpetual curacy of *Higham*, in the county of *Suffolk*, claimed in his own right, and as lessee of *Philip Gurdon* the rector, all the great and small tithes which had arisen on tithes of riding-horses, colts not worked, milch cows, calves, wethers, and bottom meadows.

The landholders of *Higham*, in *Suffolk*, only pay certain *moduses* in lieu of the

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against
WILMORE.

Bewland's Farm, in the occupation of the defendant, in the said parish, since *Michaelmas* 1792.

The defendant admitted the appointment of the plaintiff and the demise from the rector ; and said, that there had been immemorially payable, on or about the feast of *Saint Michael* in every year, by the occupiers for the time being of farms and lands situate in the parish of *Higbam* and the titheable places thereof, to the rector thereof, certain *modus*es in lieu of the tithes of milking cows, the calves of such cows, and wether sheep, and which *modus*es he particularly set forth ; and also insisted on the sum of one shilling and sixpence for every riding-horse kept, fed, and depastured upon the said lands ; the sum of one shilling for every colt not wrought, kept, bred, and depastured within or upon the said lands ; the sum of a groat an acre for bottom meadow ; in lieu and full satisfaction of the respective tithes of agistment of each and every of such cows, calves, wether sheep, lambs, riding-horses, colts, and bottom meadow. He insisted, that the *modus*es or customary payments aforesaid had been paid for time immemorial, and had not been confined to modern times ; and denied, that different sums of money had been paid at different times on account of the said tithes ; but that the aforesaid sums had been regularly and uniformly paid according to such fixed and settled rule as aforesaid ; that they were described in ancient and other muniments, books, papers, and writings, belonging to the said rectory or parish of *Higbam*, or the vicarage or perpetual curacy thereof ; and that the same are also particularly mentioned by the ancient terriers of the said parish, and particularly by a terrier taken the eleventh day of *May* 1791, and which was signed by the plaintiff, the then minister, and the churchwardens of the parish, and exhibited by the plaintiff at the primary visitation of the *Bishop of Norwich*, held at *Ipswich*, about the third day of *June* 1791 ; and therefore he ought not to be compelled to come to an account.

The plaintiff replied ; the defendant rejoined ; and divers witnesses were examined on both sides ; and the cause came on ; when upon hearing counsel on both sides, the following evidence was read on behalf of the defendant, *viz.* several terriers, beginning the thirteenth of *June* 1723, and ending in 1791 ; several depositions taken in the cause ; the following evidence on the part of the plaintiff, *viz.* a terrier, dated the fifth of *July* 1709 ; and another, dated the twenty-fourth of *September* 1716 ; and upon hearing the reply ; and on full debate of the matter ; the cause was ordered to stand over for judgment.

A trial at law was afterwards directed upon the three following issues :

FIRST,

FIRST, " Whether, from time whereof the memory of man
 " is not to the contrary, there has not been paid and payable, on
 " or about the feast of *Saint Michael* in every year, by the
 " owners for the time being of farms and lands situate within
 " the said parish of *Higham*, or the titheable places thereof,
 " the sum of one shilling for every breeding or milking cow
 " kept, fed, and depastured upon their said farms and lands
 " within the said parish or the titheable places thereof, in lieu
 " and full satisfaction of the tithes of the milk of such cows re-
 " spectively."

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against
 WILSMORE.

SECONDLY, " Whether, from time whereof the memory of
 " man is not to the contrary, there has not been paid and pay-
 " able, on or about the feast of *Saint Michael* in every year,
 " by the occupiers for the time being of farms and lands situate
 " within the said parish of *Higham*, or the titheable places
 " thereof, the sum of three halfpence for every calf dropped
 " upon their said farms and lands within the said parish, or the
 " titheable places thereof, in lieu and full satisfaction of the tithes
 " of such calves respectively."

THIRDLY, " Whether, from time whereof the memory of
 " man is not to the contrary, there has not been paid and pay-
 " able, on or about the feast of *Saint Michael* in every year, by
 " the occupiers for the time being of farms and lands situate
 " within the said parish of *Higham* and the titheable places
 " thereof, the sum of twopence for every wether sheep kept,
 " fed, and depastured upon their farms and lands within the
 " said parish and the titheable places thereof, in lieu and full
 " satisfaction of the agistment tithes of such wether sheep re-
 " spectively."

The plaintiff in equity to be plaintiff at law ; the Judge at
 liberty to indorse, &c. ; with the usual directions, &c. &c.

The plaintiff did not proceed to try the issues ; and on the
 twenty-second of *December* 1796, they were ordered to be taken
as confessed ; and on the twelfth of *December* 1796, the cause came
 on for further directions ; when, upon hearing counsel for the
 defendant and for the said plaintiff ;

THE COURT ordered the bill to be dismissed with costs.

MACDONALD, *Chief Baron*.
 HOTHAM, *Baron*.
 THOMSON, *Baron*.

MICH. TERM,
36. GEO. 3.

TENNANT *against* STUBBIN.

Suffolk, 26th November 1795.

The plaintiff, as vicar of *Higham*, in *Suffolk*, and as lessee of the rectory, claims the great and small tithes of the parish, particularly the tithes of wheat, wheat stubble, and hay;

S. C. Anst.
Rep. 640.

and states, that the wheat ought to have been set out in shocks of tenequal sheaves in each shock before any part of the wheat was taken away.

The defendant says, that he raked together some of the wheat stubble, and used it either for manure or fodder in the common husbandry of his farm; and that no tithes are due for stubble so used; that he had not mowed any hay, except on *Stour Meadow Acre*, and *Stour Meadow Half Acre*; that the said lands lie on the banks of the *Stour*; that such lands are called *Bottom Meadow*; and that there is a *modus* of fourpence an acre payable to the rector every *Michaelmas*, in lieu of tithe hay made on *Bottom Meadow*;

THE vicar or perpetual curate of the donative vicarage or perpetual curacy of *Higham*, in the county of *Suffolk*, stated, that by indenture, dated the ninth day of *February* 1775, *Philip Gurdon*, the rector of *Higham*, had demised to him all the rectory or parsonage appropriate of *Higham*, with the appurtenances, the mansion-house, and tithes, for the term of ninety-nine years; that he had ever since been in the possession of the said rectory and in perception of the said tithes, and of the tithes of all the titheable matters and things, particularly of wheat, and other grain, hay, and wood; that the defendant had for several years past, and then was in possession of certain lands called *Farthing's Hither*, *Cherry Tree Field*, *Stour Meadow Acre*, and *Stour Meadow Half Acre*, and also of divers other lands in *Higham*; that in the year 1793 he had reaped and gathered therefrom wheat stubble and hay, but had refused to set out the tithes thereof, particularly of the wheat, in a proper manner, for he had set it out in sheaves of unequal quantities instead of shocks or thraves, containing an equal number of sheaves; that he had set out the tenth sheaf as he carried the nine parts to the cart in order to take them away; that he had pretended, that there was a custom prevailing in the parish which would authorize him so to do; but that there was not any such custom. The bill therefore prayed, that an account might be taken of the wheat, stubble, and hay, which the defendant had reaped and gathered in the year 1793 from off his said lands; and that he might pay to the plaintiff the single value thereof.

The defendant admitted, that the plaintiff was vicar or perpetual curate of the donative vicarage or perpetual curacy of *Higham*; that he had obtained the lease mentioned in the bill; that he was well entitled to all the tithes arising in the parish, or to certain *moduses* in lieu thereof; that he, the defendant, occupied the said several lands in the parish; that he had, during the year 1793, reaped and gathered therefrom wheat, the quantities and values of which he set forth; that he had raked and gathered some stubble; that the said stubble had been wholly employed for the purposes of husbandry and the tillage of his lands; and he insisted, that no tithe was due for stubble so used. He also admitted, that he had mowed and gathered both a first crop and a second crop of hay; and said, that the whole of the said crops had been consumed by his own horses and cattle. He further said, that *Stour Meadow Acre* and *Stour Meadow Half Acre* were situated along the banks of the *River*

Stour;

Stour; that the said lands, and all other meadow lands so situated, had been immemorially called in the said parish *Bottom Meadow*; that there had been immemorially payable, by the occupier of lands in *Higbam*, to the rector, at *Michaelmas* yearly, fourpence for every acre of *Bottom Meadow* or meadow ground in the parish, adjoining to the *River Stour*, mowed or used for the growth of hay by the occupier, in lieu of the tithe of hay of such meadow ground; that the said *modus* fully and clearly appeared in and by the ancient books, papers, writings, and other muniments, belonging to the rectory or vicarage, and particularly by an ancient terrier, and also by a modern terrier, dated the seventeenth of *May* 1791; and that previous to the filing of the bill, he had offered the plaintiff the full amount of the said *modus* in respect of the hay mowed and gathered from *Stour Meadow Acre* and *Stour Meadow Half Acre*. He admitted, that he had not set out the tithes of any titheable matter, except of wheat, for that no other tithes were due; and he insisted, that he had set out the same in sheaves duly, according to the custom of the parish; and said, that the plaintiff having refused to accept thereof, the same had been carried away by the gleaners, or destroyed, or consumed by his cattle. He denied, that the occupiers of lands in the parish, of the description before-mentioned, had, at any time within the memory of man, paid tithes in kind of hay growing thereon, or compounded for the same. He further said, that until the year 1793 he had always compounded with the plaintiff for his tithes; that he had never made any payment for tithes of hay distinct from the general composition. He also said, that it was no part of the custom, that previous to the removal of the wheat it should be placed in equal shocks or sheaves, or set out in any other manner than was done by him. He also said, that according to the custom, the plaintiff ought, after notice, to have attended and set out his tithe of wheat at the time when the same was intended to be carried from the field.

TENANT
against
STUBBIN.

that he had set out his tithes of wheat according to the custom of the parish, and that the plaintiff had neglected to take them away;

that the custom did not require the tithes to be placed in equal shocks previous to their being removed; but that the plaintiff should have at-

tended, on notice, and have seen them set out in sheaves when removed.

The plaintiff replied; the defendant rejoined; and the cause being at issue, divers witnesses were examined on the part of the defendant; and publication being duly passed, the cause came on to be heard the thirteenth of *November* 1795; when upon hearing counsel on both sides; and reading the answers of the defendant; several depositions taken in the cause; several terriers, bearing dates from the fifth of *July* 1709 to 1791; and hearing counsel fully on the matter; it was ordered to stand over for the judgment of the Court; and on the twenty-sixth of *November* 1795;

The cause
heard.

THE COURT ordered the deputy to take an account of the tithes of all the wheat and hay which the defendant had reaped, mowed,

The tithes of wheat and hay decreed as demanded by the bill.

The bill as to the tithes of wheat stubble dismissed.

mowed, and carried away from his said lands in and since the year 1793, with costs ; the defendant to pay such sum as should be found due thereon ; and the bill, so far as it claimed an account of wheat stubble, to be dismissed without costs.

MICH. TERM,
36. GEO. 3.

NAGLE *against* EDWARD.

Cardiganshire, 27th November 1795.

The plaintiff, as lay impropriator of *Llanbadarn-faur*, in *Cardiganshire*, claims the tithes of hay, agistment of barren and unprofitable cattle, and lambs which had arisen on three ancient farms called *Abernant yr Orvion*, *Combruno*, and *Bren y gŵf*, part of a large estate, called *the Gogerthan Estate*.
S. C. Anstr.
Rep. 702.

THE rector of *Llanbadarn-faur*, in the county of *Cardigan*, claimed all the tithes of the parish, and particularly the tithes of hay and agistment ; and stated, that the rectory, in and before the reign of *Henry the Eighth*, together with divers other rectories and tithes, belonged to, and was part of the possessions of the monastery of *Vale Royal*, in the county of *Chester* ; that upon the dissolution of religious houses, the said rectory and tithes (together with other rectories and tithes belonging to the said monastery) vested in THE CROWN ; that by letters patent, dated the fifteenth day of *February*, in the eighth year of *James the First*, the said king granted to *Francis Morrice* and *Francis Phillips* and their heirs (amongst divers other rectories and tithes therein mentioned) the said rectory of *Llanbadarn-faur* in fee ; that they afterwards granted the said rectory and the tithes to *David Parry* ; that *David Parry* afterwards conveyed the same to *Sir Roger Palmer* ; that *Sir Roger Palmer*, or some person lawfully claiming under him, demised the same to certain persons for the term of five hundred years ; that by several mesne assignments, it was duly assigned to and vested in *Catherine Chichester*, who was possessed thereof at her death ; that *Catherine Chichester* died about *February 1735* ; that letters of administration of her goods, chattels, and effects, were duly granted to *John Chichester* ; that he thereby became, and was in his lifetime, and at his death, legally possessed and entitled of and to the said parish and parish-church aforesaid, and all the tithes, both great and small, belonging thereto ; that the said *John Chichester* died in the year 1783, having first made his will in writing, and appointed the plaintiff his executors thereof ; that the plaintiff had duly proved the said will ; that the plaintiff *John Needham* had also procured letters of administration of the goods, chattels, and effects of the said *Catherine Chichester*, which were unadministered by the said *J. Chichester*, deceased, to be granted to him ; and that, by the means aforesaid, the said plaintiffs became, and then were, lawfully possessed of the said term of five hundred years, and entitled to all the tithes, both great and small, arising in the parish ; that the defendants had, for several years past, occupied divers parcels of land therein ; that they respectively had mowed and gathered a great many men's maths of hay and clover from the said lands ; that they had also agisted divers barren and unprofitable cattle and sheep

sheep thereon; that they had divers ewes which had yielded lambs; but that they had refused to set out or pay the tithes thereof; that it was the immemorial custom of the parish for the occupiers of lands therein, before they set out their tithes, to give proper notice to the proprietors of the tithes, that they were about to set out the same, and fix the time when they should proceed to set them out; that they had not so done in a regular manner; and that they had agreed amongst themselves, and with other persons, to unite in defending themselves against paying any tithes, or the full values thereof. The bill therefore prayed an account and payment of the said tithes, and that the defendants might respectively come to a fair account.

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The defendants *David Jenkin* and *Richard Jenkin* denied, that the plaintiffs were, to their knowledge, entitled to the tithes in the manner stated in the bill, and negatived all the allegations conducing to the said tithes; and insisting, that the tithes, particularly of hay and agistment, which had arisen upon their farms in the parish, did not, before or in the reign of *Henry the Eighth*, belong to the monastery of *Vale Royal*, or that they had ever vested in or been granted out by the crown, as parcel of the possessions of the said monastery, unless it were in respect of the ownership of the land, or by way of discharge only. They denied the plaintiffs' title to the said rectory or the tithes, and in particular to the tithes of hay and agistment. They admitted, that they occupied certain *ancient farms*, called *Abernant-yr-Or-ion* and *Combruno*, situate in the parish of *Llanbadarn-faur*, and *Bron y gof*, situate in the township of *Vainor*; and insisted, that they were parcel of an ancient estate, called *the Gogerthan Estate*, containing several hundred acres of arable, meadow, and pasture land, the greater part of which was sheep pasture; and that in the said years they had mowed and gathered from the said lands several men's math of hay; that they had also fed thereon barren and unprofitable cattle, but no barren and unprofitable sheep; and they admitted, that they had not set out any tithes of the said hay or agistment, or made any satisfaction for the same, no tithe of hay or agistment having been ever paid for the said premises. They also admitted, that they had kept ewes and lambs; and insisted, that they had satisfied the plaintiffs, or their lessees, for the tithes of such lambs and wool, and of pigs, geese, and lactuals, to *Lady Day* 1790; but that the plaintiffs had refused to accept the tithe of lambs for the following year as set out by them.

The defendants, the occupiers of the said farms, deny the plaintiff's title to the said tithes, and set up several inconsistent defences.

The defendant *Richard Jenkin*, in regard to the tithe of hay upon his lands, admitted, that he had not set out such tithe, no tithe hay having ever been paid for the same.

1st, That by the custom of the parish, the impropriator ought to give notice on the preceding Sunday of the time and place at which he means to take the tithes of lambs and wool.

Both the defendants insisted, that there was an immemorial custom in *Llanbadarn-faur* for the owners of tithes there, before they proceeded to tithe wool and lambs in the parish, to cause a proclamation to be made on the preceding Sunday, at the parish-church, when and where they would proceed to tithe wool and lambs, and in what part of the parish they would be on particular days, and no custom for the occupiers of lands therein to make any proclamation, or give notice to the owners of the tithes of the time and manner of setting out the tithes of wool and lambs, or either of them; and they said, that the usual time of tithing lambs was about the end of *June* or the beginning of *July*; and denied, that they ever gave the plaintiffs any unfair notice of setting out the same.

2dly, That the said farms were parcels of the possessions of the monastery of *Strata Florida*; and that, on the dissolution thereof, the tithes of the hay and agistment of the said farms had been granted by the crown to the person under whom they claimed, as a portion of tithes in gross distinct from the rectory.

The defendants also insisted, that the tithes of hay and agistment arising upon the said farms, before and in the reign of *Henry the Eighth*, belonged to and were part of the possessions of the monastery of *Strata Florida*, in the county of *Cardigan*, or some other dissolved monastery or religious house, as a portion of tithes in gross distinct from the rectory of *Llanbadarn-faur*; that the same, by virtue of the several acts of parliament passed in the reign of *Henry the Eighth* for the dissolution of monasteries became vested in THE CROWN; that the same was afterwards granted out by the crown to some person or persons; and that, by virtue of divers conveyances and assurances, or other lawful ways and means, the tithes of hay and agistment upon the said farms had come to, and were then vested in *Margaret Price*, widow, as tenant for life in possession; and that they held the same under the said *Margaret Price*; that before and at the time of the dissolution of the said monastery of *Strata Florida*, the tithes of hay and agistment upon the said farms, and the possession and inheritance thereof, were held and enjoyed by the said monastery; that the same had since continued to be, and were then held and enjoyed by the crown and its grantees, and those claiming under them, as a portion of tithes distinct from the rectory of *Llanbadarn-faur*; and they insisted, that by the means aforesaid, or by some other lawful means, the said *Margaret Price*, who was the owner of the inheritance of the said farms, was entitled to the tithes of hay and agistment arising thereon, as a portion of tithes distinct from the said rectory; and that the plaintiffs were in no manner entitled thereto.

3dly, That the said farms were parcel of the possessions of the monastery of *Vale Royal*, a monastery of the *Cistercian order*, and were granted as aforesaid discharged of tithes.

The defendants further insisted, that the said farms, before and in the reign of *Henry the Eighth*, belonged to, and were parcel of the possessions of the monastery of *Vale Royal*; that the said monastery was for monks of the *Cistercian order*; that it was one of the greater monasteries, or part of some other of the greater monasteries dissolved by *Henry the Eighth*; that by virtue thereof, it devolved to the crown; that the said lands were afterwards granted out by the crown to some person or persons, and by divers conveyances, assurances, or other lawful ways and means, had

had come to, and were vested in the said *Margaret Price*, that before and at the time of the dissolution of the monasteries, the said farms were parcel of the possessions and inheritance of the monastery of *Vale Royal*, or of some of the greater abbies, and were before and at the dissolution in the hands of the abbot and convent thereof, freed and discharged from the payment of tithes of hay and agistment; that the same had, ever since the dissolution of the monastery to which the said farms belonged, been, and then continued, exempt and discharged from the payment of tithes of hay and agistment; and that by the means aforesaid, or some other lawful ways and means, the said farms were exempt from the payment of the said tithes, and the plaintiffs were in no wise entitled thereto.

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The defendant further insisted, that upon, or some time after the dissolution of monasteries, the crown or its grantee, or those claiming under them, who were entitled to the inheritance of the tithes of hay and agistment upon the said farms, did, by sufficient conveyance, for a valuable consideration, grant, alien, and release the tithes of hay and agistment upon the said farms to the owner of the inheritance thereof; that although the original grant was by accident lost or destroyed, yet that from the making of the said grant and conveyance since the dissolution of monasteries, and for more than a century last past, the owners and occupiers of the said farms had held, and still held them, together with the tithes of the hay and agistment thereof, released and discharged from the payment of the said tithes under the said grant, or by some other lawful ways and means; and that after so great a length of free enjoyment the said grant ought to be presumed; and that the owner thereof was, by virtue thereof, or some other lawful ways and means, entitled to the tithes of hay and agistment, or to the said farms and lands, released and discharged therefrom, notwithstanding the grant was lost or destroyed; and that the plaintiffs were in no manner entitled to the said tithes, especially as neither the plaintiffs, nor any person under whom they claimed, had ever had the pernancy of the said tithes, particularly the tithes of hay and agistment upon the said farms, or any recompence or satisfaction for the same.

4thly, That the crown, or some of its grantees, who had been entitled to the inheritance of the tithes of hay and agistment of the said farms, had granted the said tithes to the owners thereof; and that the non-payment of the tithes was evidence of the grant.

The defendants further insisted, that within the parish of *Llanbadarn-fawr* there was, and had been immemorially, a certain ancient meadow, called *Gwirgload-y-Parson*, otherwise *the Parson's Meadow*, which had been immemorially mown, and ought still to be mown; that the said meadow was, and immemorially had been, parcel of the said *Gogerthan Estate*, and parcel of the farm in the possession of the defendant *Thomas Edward*, and whereof the said *Margaret Price* was tenant for life; that the said *Margaret Price* was, and ought to be, at the expence of making the

5thly, That by a composition real, the produce of an acre and a half of land in a field called *Gwirgload-y-Parson*, or *the Parson's Meadow*, had been assigned to the

vicar in lieu of all the tithes hay and agistment tithes arising in the parish.
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hedges and ditches in and about the same ; that the said meadow contained about eight men's math of hay, and in measure seven acres ; that an ancient *composition real* had been made before the reign of *Queen Elizabeth*, by virtue whereof the hay and hay-grass annually growing upon a certain part of the said ancient meadow, containing about one acre and a half, was set out by the owners of lands within the said parish, or at least by the owner of *the Gogerthan Estate* (whereof the defendant's farms had been immemorially parcel), to the vicar of *Llanbadarn-faur* and his successors, in lieu of the tithes of hay and agistment, or at least the tithe of hay yearly thereafter to arise within the said parish, or at least from the *Gogerthan Estate*, and in particular from the meadow lands and pasture belonging to the said farms ; that the hay and hay-grass of the one acre and an half, parcel of the said ancient meadow so immemorially mown, had from the making such *composition real*, and ever since, been accepted, and still ought to be accepted, by the vicar (who had been immemorially, and of right ought to be, at the expence of mowing, making, and carrying away the same), in lieu of the tithes of hay and agistment, or at least the tithe of hay yearly arising in the parish, or at least from *the Gogerthan Estate*, and in particular from the meadow and pasture lands, or at least from the meadow lands belonging to the said farms, which had immemorially been, and were parcel of *the Gogerthan Estate* ; and that, by virtue of the said *composition real*, or some other lawful title, the owner of the inheritance of the said farm was entitled, either in pernaney, or by way of discharge, to the tithes of hay and agistment arising thereon ; and that the plaintiffs were in no wise entitled thereto, or to any composition or satisfaction for the same.

6thly, That a cheese made of one morning's meal of milk was payable to the vicar, on *Midsummer Day* yearly, for each of the said farms, as a *modus* in lieu of all agistment tithes, at least of all agistment tithes of barren cattle depastured thereon.

The defendants further insisted, that according to an ancient custom in *Llanbadarn-faur*, the occupiers of the said ancient farms had immemorially paid, and of right still ought to pay, to the vicar yearly, on *Midsummer Day*, or as soon after as demanded, one cheese made of one morning's meal of milk for each of the said farms, as a *modus* in lieu of all the tithes of the cattle, both profitable and unprofitable, or at least of the barren and unprofitable cattle kept upon the said farms ; and that the same had been immemorially accepted by the vicar accordingly.

7thly, That there was a custom in the county of *Cardigan* to prescribe in *non decimando* against the payment of the tithes of hay and agistment of the several parishes therein.

The defendants further insisted, that in and throughout the whole country, comprehending the several parishes, towns, townships, and hamlets of *Llanbadarn-faur*, *Aboristwith*, *Llanphangel*, *Giner Glynne*, *Llangynfelin*, *Llanfychangel-y-Croyddin*, *Llanillar*, *Llangorothin*, *Llanyrbane*, otherwise *Llangbaywarne*, *Llandavan*, and *Llanvinis*, there was, and time out of mind had been, a custom used and approved therein, that no tithes of hay and agistment had been and was, or of right ought to be, paid

and payable in and throughout the whole of the said country, and the limits thereof; that the said farms were within the said limits; that the rectories and chapels of the said parishes, towns, townships, or hamlets, were supposed to have been parcel of the possessions of the said monastery of *Vale Royal*, and to have been then called *Llanbadarn, Aboristwith, Llanfihangel, Castle Gwalter, Llangynvelin, Llanfihangel, Gwolandred, Llanilane, Llangorothan, Llanyrhawe*, otherwise *Llanghay-warne, Llanivan*, and *Llanvinis*; and that, by virtue of the said custom *in non decimando*, they were quit of the tithes of hay and agistment arising from the said farms, there being a sufficient maintenance and subsistence for the incumbent of the said parish besides the tithes of hay and agistment, and without such tithes.

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The defendants further said, that no tithes of hay or agistment from the said farms had ever been paid or tendered to or to the use of the plaintiffs, or any person under whom they claimed, or any satisfaction made for the same; and they insisted upon such non-payment and the several proofs to be adduced in evidence of their title in pernaney, or by discharge of the tithes of hay and agistment upon the said farms, against the claim set up thereto by the plaintiffs; and hoped that such title would be presumed therefrom.

8thly, That no tithes of hay or agistment had ever been paid for the said farms.

The defendants further insisted upon the several acts of parliament touching the tithes and possessions belonging to the dissolved monasteries, and for the recovery and assurance thereof, and in particular upon the statute 32. *Hen. 8.* in that behalf, and upon the clause therein respecting tithes temporal and in temporal hands, and lay uses, and remedies for the recovery, and assurance for the conveyance thereof, and also upon the *statutes for limitations* of actions; and hoped they should have the full benefit thereof against the claim set up by the plaintiffs; and the rather, because they submitted, that after such length of enjoyment a conveyance and assurance of the tithes in question ought to be presumed in favour of those under whom they claimed; and that as the plaintiff, and those under whom they claimed, had not ever had any possession of such, they were without any remedy at law for the recovery of the possession of the inheritance thereof: and hoped, that they should not have any account or satisfaction against them in equity, at least till the plaintiffs had recovered and established their right at law.

9thly, The statutes dissolving monasteries and the statute of limitations.

The defendants further insisted, that as the *Earl of Lisburne* and the vicar of the parish severally set up a claim to the tithes in question, or some part thereof, they ought to be parties to the suit.

10thly, That the vicar and a claimant ought to have been parties to the suit;

The other defendants put in the like answer, and denied the plaintiff's title to the rectory and the tithes thereof, and in particular

and they admit, that they had not set out the tithes;

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cular to the tithes of hay and agistment ; and insisted they were in no wise entitled thereto.

and described the lands of which the farms consisted, and the quantity and quality of the tithes.

The cause heard.

The defendants set forth the several farms and lands they respectively held and occupied in the parish, and the quantities and qualities of their titheable matters and things ; and admitted, that they had not set out their tithes of hay or agistment.

The plaintiffs replied ; the defendants rejoined ; and witnesses were examined on both sides ; and upon hearing counsel on both sides ; and reading, on behalf of the plaintiffs, the probate of the will of *John Chichester*, deceased, dated the third of *December* 1782 ; the letters patent, bearing date the fifteenth day of *February*, in the eighth year of the reign of *James the First* ; an indenture of bargain and sale, dated the tenth of *July*, in the tenth year of the reign of the said king, made between *F. Morrice* and *F. Phillips* of the one part ; and *W. Pitt* and *A. Squibb* of the other part ; indentures of bargain and sale, dated the twenty-first of *May*, in the fifth year of the reign of *Charles the First*, between *Sir William Pitt, Knight*, and *A. Squibb* of the one part, and *D. Parry* of the other part ; an indenture of bargain and sale, dated the twentieth of *February*, in the sixteenth year of the reign of the said king, between *D. Palmer* and *Sir Roger Palmer* ; an indenture of bargain and sale, dated the first of *December* 1666, made between the right honourable *Roger Palmer, Earl of Castlemaine*, and *Lady Barbara, Countess of Castlemaine*, his wife, and others, of the one part, and *Roger Jennings* and *Edward Nicholas* of the other part ; indentures of lease and release, dated the twenty-fourth and twenty-fifth days of *August* 1675, between the right honourable *Roger Palmer, Earl of Castlemaine*, and others of the first part, *James Palmer* and others of the second part, and *John Robinson* and *T. Langborne* of the third part ; a bond from the said *R. Palmer, Earl of Castlemaine*, to the said *Lame Catherine Southcott* and others, for six hundred pounds ; an indenture of assignment, dated the second of *August* 1699, between the said *Sir W. K. Blount* and others of the first part, *John Chichester* of the second part, and the said *Earl of Castlemaine* of the third part ; another indenture of assignment, of five parts, dated the twenty-seventh of *November* 1713, between the said *Sir W. K. Blount* and others, an indenture, dated the tenth day of *March* 1717, between the said *John Courtney* of the one part, and *Giles Chichester* and *Catherine* his wife of the other part ; an indenture of assignment, dated the twenty-sixth day of *March* 1718, between the said *John Chichester* of the first part, the said *John Courtney* of the second part, and *F. Croff* and *E. Webb* of the third part ; a deed poll indorsed on the said indenture, dated the twenty-first of *April* 1721 ; an indenture of assignment,

assignment, dated the sixteenth day of *February* 1732, between the said *Edward Webb* of the one part, and *Catherine Chichester*, the widow, relict, and executrix of the said *Giles Chichester*, deceased, of the other part; letters of administration of the goods and chattels of the said *Catherine Chichester*, dated the fifth of *February* 1735, granted by the prerogative court of *Canterbury* to *John Chichester, Esquire*, her son; letters of administration of the goods and chattels of the said *Catherine Chichester* (unadministered by the said *John Chichester*, deceased), dated the nineteenth of *March* 1789, granted by the prerogative court of *Canterbury* to the plaintiff *John Feedham*; proofs taken in the cause on the part of the plaintiffs; the affidavit of service of *subpœna* to hear judgment in this cause, no counsel appearing on behalf of the defendants; and the answers of the defendants;

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THE COURT ordered the deputy to take an account of what was due from the several defendants for the tithes demanded by the bill, with costs, unless cause were shewn to the contrary.

The tithes decreed *sig.*

The defendants appeared by counsel on the twenty-seventh day of *January* 1796; and hearing counsel several days; and on reading, on their behalf, the letters patent, dated the fifteenth day of *February*, in the eighth year of *James the First*; the several deeds, probates, letters of administration, and other documents and proofs particularly mentioned in the said decree; also reading, on behalf of the plaintiffs, the depositions of *Isaac Williams* and *Richard Lewis*; and reading further evidence for the defendants, *viz.* the deposition of *William Worrall*; an indenture of settlement, dated the fifteenth of *July*, in the tenth year of the reign of *James the First*, between *Sir Richard Price* and *Thomas Price*, and *Rowland Pugh*; and hearing the plaintiffs counsel in reply; and on full debate of the matter;

The defendants appear, and further evidence is read.

The cause was adjourned for the judgment of the Court; and on the twenty-fifth of *February* 1796;

Curia advisare vult.

THE COURT ordered, that so much of the decree of the twenty-seventh of *November* 1795 as directed an account to be taken of what was due from the defendants for the tithes of hay and agistment of barren and unprofitable cattle (part of the tithes demanded by the bill), with costs to the hearing, should be made absolute.

The tithes of hay and agistment, as demanded by the bill, decreed with costs.

THE COURT further ordered, that so much of the decree as directed an account to be taken of what was due from the defendants *D. Jenkin, R. Jenkin, and W. Poole*, for the tithe of lambs (further part of the tithes demanded by the bill), with costs, should be varied, and the bill in respect of such last-mentioned demand be dismissed, without costs on either side.

The bill as to the tithes of lambs dismissed.

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with costs as to
some of the de-
fendants, and
without costs as
to others.

THE COURT further ordered, that so much of the decree as directed an account to be taken of what was due from the defendant *Evan Edward* for the tithe of lambs be also varied; and that the said bill, in respect to such demand, be dismissed with costs.

THE COURT also directed, that subsequent costs as to the accounts directed, and all further directions, should be reserved until after the report.

THE COURT FULL.

TRIN. TERM,
36. GEO. 3.

SCARR against TRINITY COLLEGE, CAMBRIDGE.

Yorkshire, 2d July 1796.

The landholders in the townships of *Bainbridge, Ragdale Side, and Hawes Quarter*, in the parish of *Aisgarth*, in *Yorkshire*, pay to the rector 4s. 4d. every *Michaelmas Day*, in lieu of all *predial tithes* arising on their said lands.

8 C. Anst.
Rep 760.

See Chater v.
Trinity College,
post.

THE plaintiffs, on behalf of themselves and all other the owners and occupiers of lands in the parish of *Aisgarth*, in the county of *York*, stated, that there had been immemorially within the parish certain ancient towns, townships, hamlets, and districts, commonly called or known by the several names of *Bainbridge, Ragdale Side, and Hawes Quarter*; that they were distinguished by certain well known boundaries and limits; that by an immemorial custom, all the lands in the said townships, hamlets, and districts, and the owners and occupiers thereof, had been immemorially, and of right ought to be exempt from the payment of all *predial tithes* whatsoever yearly arising in, upon, or from the same, or any other satisfaction for the same, than the yearly sum of four shillings and fourpence to the rector on *Michaelmas Day*, or as soon after as demanded; that the said sum of four shillings and fourpence had been immemorially raised by way of contribution by and between the several owners and occupiers of such lands, and constantly paid by them, or some of them, to the rectors, or their tithe-gatherers, farmers, or agents, in manner aforesaid, as and for a yearly *modus* for and in respect of all such *predial tithes* as aforesaid; that the said *modus* till lately had been accepted by the rector in lieu of all such *predial tithes* as aforesaid; that they were owners and occupiers of lands in the said townships, hamlets, and districts, or some of them; that they, and the rest of the owners and occupiers, hoped to have enjoyed the same free from all claim of any *predial tithes* by the rector, on being paid the said *modus*; but that the defendants *the College* claimed to be entitled to the said rectory, subject to a lease to the defendant *J. R. Wood*; that *J. R. Wood* insisted, that all the lands in the said townships, &c. were subject to the payment of all *predial tithes* arising upon the same; and that if the said yearly sum had at any time been paid for the same, or in lieu thereof, it was paid as a *composition* only, and liable to be varied at pleasure. The bill then charged the contrary, that it was a *modus*, and had time out of mind been paid and accepted as such,

in

in lieu of all predial tithes as aforesaid; that the said defendant *Wood* had received the same for the years 1785 and 1786; AND PRAYED, that they, the plaintiffs, might examine witnesses *de bene esse*; that their testimony might be preserved *in perpetuum rei memoriam*; that the *modus* might be established; and that, if necessary, one or more issue or issues might be directed to try the validity thereof.

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The defendants, by their joint answer, admitted, that there had been immemorially within the parish certain townships, hamlets, or districts, called by the several names of *Bainbridge*, *Ragdale Side*, and *Hawes Quarter*; but that the same were not distinguished by certain well known limits and boundaries. They denied the *modus* as stated in the bill; but said, that the yearly sum of four shillings and fourpence had sometimes been paid, within a few years past, by some of the owners and occupiers of the several farms, as and for a *composition* in lieu of some small tithes; but that the same never was payable on *Michaelmas Day*.

The defendant *Wood* admitted, that the said sum had been paid to him in and for the years 1785 and 1786 before he was acquainted with the rights and customs of the rectory, and had been accepted by him as the lessee of *the College*.

The College said, that they claimed to be entitled to the rectory, and all the tithes thereto belonging, subject to a lease to the defendant *Wood*; and denied the *modus* for all predial tithes, as stated in the bill.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and on hearing counsel, the cause came on the third of *July* 1794; and on reading the following evidence for the plaintiffs, *viz.* the depositions of several witnesses taken in this cause; several receipts from 1767 to 1784; and on the depositions of *George Scarr* being offered in evidence, and objected to by the defendants counsel; and the depositions of the said *G. Scarr* being read to contrary interrogatories, and the said objection being allowed, and the evidence rejected; and on reading a lease from *Trinity College, Cambridge*, to *Josias Lambert* and others, dated the twenty-eighth of *March* 1721; and on a book, containing five pages, purporting to be an account of certain profits arising from the royalties of the manor of *Bainbridge*, kept by the late *Alexander Whalley*, being offered to be read, and objected to by the defendant's counsel, and the objection being allowed; and on reading an order for publishing the depositions taken *de bene esse*, and reading the same; and reading the following evidence for the defendants, *viz.* the depositions of several witnesses taken in this cause; and several tithing books of the parish of *Aisgarth*; and upon hearing the reply;

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The cause was ordered to stand over for the judgment of the Court; and, on the second of *July* 1796;

THE LORD CHIEF BARON pronounced the judgment; and thereupon an issue was directed to try, "Whether, from time
" whereof the memory of man is not to the contrary, all and
" every the lands and grounds situate, lying, and being in the
" ancient towns, townships, hamlets, or districts commonly
" called or known by the names of *Bainbridge, Ragdale Side,*
" and *Hawes Quarter*, within the said rectory and parish of
" *Aisgarth*, and the owners and occupiers thereof have not
" been by ancient usage, custom, or prescription, or otherwise
" exempt from the payment of all *predial tithes* whatsoever
" yearly arising, growing, increasing, or renewing in or upon
" the same, or any other satisfaction for the same, save and ex-
" cept the yearly *modus* or annual payment of fourpence, pay-
" able to the rector or rectors of the said rectory and parish of
" *Aisgarth* for the time being, on *Michaelmas Day* in each year,
" according to the old stile or mode of computing time, or as
" soon after as demanded."

The plaintiffs in equity to be plaintiffs at law, &c. to be tried by a special jury; the judge at liberty to indorse any thing special; and the consideration of costs, and all further directions to be reserved till after trial.

On the thirteenth of *February* 1797, the cause was ordered to be *reheard*; but on the eighth of *February* 1798 counsel on both sides agreed to waive the rehearing, and that the *modus* should be established.

THE COURT thereupon ordered by consent the *modus* to be established, and all parties to abide by their own costs.

TRIN. TERM,
36. GEO. 3.

FRANKLIN *against* SPILLING.

Norfolk, 2d July 1796.

The rector of *Earsbam*, in *Norfolk*, claims the tithes of turnips, clover, hay, sheep fed after shearing, milk, calves, and grazed cattle.

S. C. Anst. Rep.
760.

THE rectory of *Earsbam*, in the county of *Norfolk*, claimed all tithes, both great and small, arising in the said rectory; and stated, that the defendant occupied a farm containing two hundred acres of land therein; that he had had a large quantity of turnips thereon, which he had severed from the land in which they grew; that he had also made several acres of clover and meadow grass into hay; that he had also depastured and milked upon the said farm several cows; that the said cows had produced several calves; that he had also fed a number of sheep, either of his own or other persons taken in to agist for hire, which had yielded no tithe whilst they were upon the farm; that he had also kept and sheared a whole flock of sheep thereon; that the ewes he kept had brought forth many lambs; that he had

had also kept sows which had pigs; that he had depastured bullocks, oxen, steers, heifers, rumps, horses, and other dry, barren, and unprofitable cattle; that he was indebted in the sum of twopence for an *Easter offering* for himself, and the like sum for every person in his family above sixteen years of age; but that he had refused to pay the tithes of the said matters, or to make any satisfaction for the same. The bill therefore prayed an account and payment thereof.

FRANKLIN
against
SPELLING.

The defendant said, that the rectory had been some time vacant, and that the plaintiff was duly presented thereto; that he the defendant occupied a farm of his own in the parish, and also rented town and other lands therein; that he had cultivated a few acres of turnips and a small quantity of clover; that the turnips were eaten off, and the crop of clover cut before the plaintiff's induction; that the clover was not cut a second time; and that he had always been willing to pay the full value of the tithes of the said turnips and clover without further suit, as well as the *Easter offerings*: and as to the other tithes he insisted on, the following *modus*, that is to say, for a tithe calf ten shillings; for lactage one penny a cow; for each cow and calf under the number of seven one penny halfpenny; for every heifer one penny; for a tithe lamb three shillings and sixpence; and for each lamb under seven fourpence; a penny a peck for hemp seed sown; for a tithe goose ninepence; for a tithe chicken or duck threepence; for a tithe turkey one shilling; hearth, garden, and orchard, twopence; for each colt under the age of two years, or till worked, one penny a-year; for a grazing and feeding beast one shilling; for each peck of beans sown one shilling; for all mowing grass, except clover, nonsuch, and such like, threepence an acre; and he referred to certain ancient *terriers* for evidence thereof.

The defendant admits, that the tithes of turnips and clover hay are due;

and insists on *modus* in lieu of the tithes of calves, heifers, lambs, hemp seed, geese, chickens, turkeys, fruits, firewood, colts, grazing beasts, and meadow hay.

The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides; and upon hearing counsel, and reading the defendant's answer; the deposition of *John Spilling* the younger to the third, fourth, and fifth interrogatories; and reading the following evidence for the defendant, *viz.* several *terriers* beginning the thirtieth of *May* 1706, and ending the twenty-third of *June* 1784; an account book, intitled, "*Earsham Tithe Book*," begun in the year 1709; the depositions of several witnesses; several receipts for tithes and *modus*; and hearing plaintiff's counsel in reply; and on full debate of the matter, the cause was ordered to stand over for judgment; and the same now, on the second of *July* 1796, was pronounced accordingly by THE LORD CHIEF BARON.

The cause heard.

THE COURT thereupon ordered the deputy to take an account of what was due for the tithes of turnips, clover, agistment of sheep after shearing, and wool since the death of the

The tithes of turnips, clover, hay, and the agistment of day decreed.

sheep fed between shearing day and shearing

FRANKLIN
against
SPILLING.

last incumbent, being the period demanded by the bill; and for *Easter offerings* during the said time.

Issues directed.

But THE COURT directed issues to try,

1st. Whether
1d. a cow is pay-
able in lieu of
tithe milk.

FIRST, "Whether, from time whereof the memory of man runneth not to the contrary, there hath not been an usage or custom within the said rectory or parish of *Earsbam*, for every occupier of lands and grounds within the same, or the titheable places thereof, to pay to the rector of the said rectory for the time being, or to his use, the sum of one penny a cow, in lieu and satisfaction of the tithes of milk of the cows by such occupier kept, fed, and depastured upon such lands in his occupation as aforesaid."

2dly. Whether
1½ in lieu of the
tithes of cow
and calf under
seven.

SECONDLY, "Whether, from time whereof the memory of man runneth not to the contrary, there hath been an usage or custom within the said rectory and parish of *Earsbam*, for every occupier of lands and grounds within the same, or the titheable places thereof, to pay to the rector of the said rectory for the time being, or to his use, the sum of one penny halfpenny, in lieu and satisfaction of the tithes for each cow and calf under the number of seven had and received by such occupier, the calf being produced upon the said lands in his occupation as aforesaid."

3dly. Whether
1s. for every
grazing beast in
lieu of agistment
tithes.

THIRDLY, "Whether, from time whertof the memory of man runneth not to the contrary, there hath not been an usage or custom within the said rectory and parish of *Earsbam*, for every occupier of lands or grounds within the same, or the titheable places thereof, to pay to the rector of the said rectory for the time being, or to his use, the sum of one shilling for each grazing and feeding beast kept, fed, and depastured by such occupier upon the said lands or grounds, in lieu and satisfaction of the tithe agistment thereof respectively."

4thly. Whether
3d. an acre in
lieu of the tithes
of meadow hay.

FOURTHLY, "Whether, from time whereof the memory of man runneth not to the contrary, there hath not been an usage or custom within the said rectory and parish of *Earsbam*, for every occupier of lands and grounds within the same, or the titheable places thereof, to pay to the rector of the said rectory for the time being, or to his use, the sum of threepence an acre, in lieu and satisfaction of the tithes of all mowing grafs (except clover, nonfuch, and such like) by such occupier had and produced from such lands in his occupation as aforesaid."

The defendant
in equity to be
plaintiff at law.

The issues to be tried in a feigned action the defendant in equity to be plaintiff at law; the judge to be at liberty to indorse the *posse* if any special matter should arise; and the

costs

costs and further directions to be reserved till after trial and report made.

In pursuance of the said decree, a trial was had, and the jury found a verdict for the plaintiff at law *Spilling* on the first, second, and third issues; and for the defendant at law *Franklin* on the fourth issue, with the following indorsement as to the fourth issue: "The jury found, and so it appeared in evidence, that from time whereof the memory of man runneth not to the contrary, there hath been an usage or custom within the said rectory and parish for every occupier of lands and grounds within the same, or the titheable places thereof, being resident within the said parish, or the titheable places thereof, to pay to the rector of the said rectory for the time being, or to his use, the sum of threepence an acre in lieu and satisfaction of the tithes of all mowing grafs (except clover, nonsuch, and such like), by such resident occupier had and produced from such lands in his occupation as aforesaid, and not sold out of the said parish before the taking and carrying away the same from off the land on which the same had grown."

But no further proceedings were had in the cause.

STOKES *against* MORGAN.

Monmouthshire, 11th November 1796.

THE plaintiff, as lessee of *P. H. Cecil*, vicar of *Skenforth*, in the county of *Monmouth*, claimed the vicarial tithes of the parish, and also a portion of the great tithes thereof, in common with the vicar of *Monmouth*, from the twenty-ninth of September 1790.

The defendant *Cecil* said, that he was vicar of *Skenforth*, and that he had demised the tithes to the plaintiff.

The defendant *J. Morgan* admitted, that *Cecil* was vicar of *Skenforth*; and said, that the parish is divided, with respect to the great tithes, into three unequal portions; that two of the portions exclusively belongs to the vicar of the parish of *Leigh*, in the county of *Hereford*; that the remaining portion belongs to the vicar of *Skenforth* in common with the vicar of *Monmouth*; that he the defendant, as tenant to the *Duke of Beaufort*, occupied a farm in the parish of *Skenforth*, and also a small farm of his own called *the Folly*; that all the small tithes, and a moiety of the great tithes of part of the said premises, were payable to *Cecil*, but not all of them in kind, for that there were payable twopence yearly for every day's math of hay (a day's math, according to the custom of the said parish, being a statute acre) in lieu of the tithe of hay; twopence an acre yearly in lieu of the tithe of clover and rye grafs, in whatsoever way the same is

FRANKLIN
against
SPILLING.

The jury find for the first three issues, and against the last issue, but that 3d. an acre is payable by resident occupiers in lieu of tithe hay.

The vicar of *Skenforth*, in *Monmouthshire*, is entitled to all the small tithes, and to a moiety of the great tithes of the parish; but not all in kind, for there are *modus*es payable in lieu of the tithes of hay, clover, rye grafs, cows, calves, milk, colts, wool, and jack cattle.

STOKES
against
MORGAN
AND OTHERS.

cultivated and managed; twopence halfpenny for every cow and calf, in lieu of the tithe of milk and calf; twopence yearly for every barren cow, except such as are denominated *Jack Cattle*, in lieu of the tithe of the agistment of such barren cow; one shilling for every colt, in lieu of the tithe of colts; one penny for every fleece of wool shorn in the parish, in lieu of the tithes of wool; and fourpence yearly for every head of *Jack Cattle* depastured therein, in lieu of the tithe of the agistment of such *Jack Cattle*; that the said *modus*es were payable yearly at *Michaelmas*, or so soon after as demanded; that they had been immemorially accepted by the vicar as *modus*es, in lieu of the several species of tithes before-mentioned; that the plaintiff ought to accept the same as his lessee; that he had always been and then was ready to pay him all such tithes, *modus*es, or other compensations as were due; and that before filing the bill, he had offered to pay him three pounds five shillings for his tithes and *modus*es, which he had refused to accept unless he would agree to pay it merely as a *composition* for the tithes.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and upon hearing counsel; and reading the lease dated the second of *February* 1790 from *Cecil* to the plaintiff; a notice from the plaintiff to the defendant *J. Morgan*, to put an end to the composition for his tithes, dated the eighteenth of *February* 1790; and the several proofs in the cause;

THE COURT ordered the bill to be dismissed, with costs.

HILARY TERM
37. GEO. 3.

TURNER against CHARLTON.

Nottinghamshire, 15th November 1796.

The vicar of the parish of *Attenborough*, with the chapelry of *Bramcote*, in the county of *Nottingham* annexed, is entitled to the tithes of wool, lambs, and the agistment of barren and unprofitable cattle in kind, excepting the tithe agistment of barren cows, for which he is only entitled to a *modus* of 1d. each

THE vicar of the perpetual vicarage of *Attenborough*, with *Bramcote*, in the county of *Nottingham*, claimed all the small tithes, particularly the tithes of wool, of lambs, and of the agistment of barren and unprofitable cattle within the parish; and stated, that the defendant *Thomas Charlton* and others occupied farms therein, on which they had had divers sheep and ewes, which yielded wool and lambs; that they had also fed thereon divers barren and unprofitable cattle, but that they had refused to pay the tithes thereof. The bill also stated, that the defendant *Sir Henry Hunbeck* and others, who as trustees of a charity called *Foljambe's Charity*, were rectors impropriate of the parish, claimed to be entitled to the said tithes, and averred that they were not entitled thereto, but that the said tithes belonged to the plaintiff as vicar, and that the rector impropriate had not any right thereto or interest therein. The bill therefore prayed an account for all the tithes of wool, lambs, and agistment of barren and

a-year; but *quære*, Whether there are not also *modus*es in lieu of the tithes of milk cows, mares, foals, dove cotes, milk, bees, honey, wax, the *Stone Meadow* at *Gbiswell*, the *Six Acres* in *Toton*, and the *Fourteen Acres* in *Upton's Farm*.

unprofit-

unprofitable cattle from the death of the last incumbent, and payment of what should appear due thereon.

TURNER
against
CHARLTON.

The defendants *Thomas Charlton* and others said, that in the year 1344 the vicarage of *Attenborough*, with *Bramcote*, was endowed and made a perpetual vicarage; that it had ever since continued so to be; that by the said endowment the vicar had certain lands assigned to him in the parish by way of *glebe lands*, certain other profits and emoluments therein mentioned, and certain payments in lieu of the tithes of the several titheable matters and things therein also mentioned; that he had not ever received any tithe in kind of any of the titheable matters which had arisen upon the lands in the parish save as after mentioned; and that no other payments had ever been made to the vicar; that the vicar of the said parish was not entitled to all the small tithes arising therein; that particularly in lieu of the tithe of wool, of lambs, and of the agistment of barren and unprofitable cattle, an annual payment had, amongst other tithes, been made to the impropiators as hereinafter mentioned. They further said, that the parish of *Attenborough* included the three villages of *Chilwell*, *Toton*, and *Bramcote*; that the village of *Bramcote* had a chapel; that by divers terriers made at different periods of time relative to the vicarage and its vicarial rights, signed and subscribed by the vicars, churchwardens, and the principal inhabitants of the parish, the right of the vicar appears; and that the vicars and the inhabitants of the parish ought reciprocally to abide by the said three terriers, dated the fifteenth day of *August* 1687, the twenty-fifth day of *June* 1770, and the eleventh day of *June* 1777. They then stated, that the trustees of *Chesterfield School* were the owners of the great tithes of the parish; that they claimed under a gift thereof in trust for the school from the family of the *Foljambe's*, who were heretofore seised in fee of the advowson; that an annual sum was paid in a gross rent to the trustees of the school, for all the great tithes arising in the parish, including the tithes of wool, lambs, and the agistment of barren and unprofitable cattle. They admitted, that the vicar was entitled to the tithes mentioned in the terriers, and submitted to pay the same accordingly; but insisted, that three halfpence for a cow, one penny for a stropper or barren cow, three halfpence each for mares and foals, twopence an acre in *the Stone Meadow* at *Chilwell*, tenpence halfpenny for six acres, part thereof in *Toton*, two shillings and an halfpenny for fourteen acres in possession of *Thomas Upton*, ten groats for a dove cote, ten groats for a mill, one penny for a swarm of bees, and a halfpenny for a cask of honey and wax, as stated in the terriers, were good and valid *modusies*. They further said, that even supposing the vicar to be entitled to the agistment of barren and unprofitable cattle (which they did not admit), he could not claim tithes for the agistment of milch cows, stropplers, and foals, there

TURNER
against
CHARLTON.

being *moduses* payable for the same respectively, and therefore they could not be included under the denomination of barren and unprofitable cattle. They further said, that around all the four towns or villages aforesaid there was a ring or rings, comprehending the tofts, orchards, and crofts in the parish, within which the vicar was entitled to the tithes before-mentioned, and within which ring or rings the impropiator had not any concern; and that the vicar was not entitled to the tithes of any titheable matters or things arising within the said parish, or the titheable places thereof, without the said ring or rings.

The defendant *Marriott* insisted, that with respect to the farm occupied by him in *Bramcote*, seven pounds and one quarter of oats were payable yearly at *Christmas* to the trustees of *Chesterfield School*, by the owners or occupiers thereof, in lieu of the great tithes arising thereon; including the tithes of wool, lambs, and agistment of barren and unprofitable cattle; that the village of *Bramcote* had a ring around it of the nature before described, called *the Vicar's Ring*; that as the vicar had not, either by the endowment or the ancient terriers, any *glebe land* in *Bramcote*; and as it appeared by the modern terriers that he then had *glebe land* therein, such land must have been added or given to the vicar in consideration of his giving up some right which he formerly had in the village; and that by an act of parliament passed in 1771 for dividing and inclosing the open fields and lands within the liberties of *Stapleford* and *Bramcote* aforesaid, the vicar had certain lands allotted to him in lieu of all tithes upon or from the lands so inclosed.

The other defendants, the occupiers, put in the like answers, and stated the farms and lands they occupied within the said parish and villages, and set forth the titheable matters they had had thereon.

The trustees of *Foljambe's Charity*, by their answer to the said bill filed without oath, pursuant to an order obtained for that purpose, said there was and had been for a number of years past a *perpetual vicarage* in the parish, and that the vicar thereof was entitled to the small tithes therein; that they were, as trustees, the rector impropriate of the parish; and that they did not claim, as such, the tithes of wool, of lambs, or of agistment.

The plaintiff replied; the defendants rejoined; and witnesses were examined on the part of the defendants; and upon hearing counsel for all parties; and reading on behalf of the plaintiff, an order made in this cause, dated the twenty-ninth day of *January* 1796; a copy (by consent) of the endowment of the vicarage of *Attenborough*, in the county of *Nottingham*, dated the thirteenth day of *June* 1334, from the consistory court of the *Archbishop of York*; a copy of the
return

return of the valuation of the vicarage of *Attenborough*, from the ecclesiastical survey (in THE FIRST FRUITS OFFICE), taken in pursuance of an act of parliament passed in the twenty-sixth year of *Henry the Eighth*; the answer of the defendants, the impropiators; an act of parliament passed in the eleventh year of his present Majesty's reign, intitled, "An Act for dividing and inclosing the Open Fields, Meadows, Commons, or Common Pastures within the Liberties of *Stapleford* and *Bramcote*, in the County of *Nottingham*;" and upon reading the following evidence on behalf of the defendants, the occupiers (by consent) several terriers of the glebe lands, and what belongeth to the vicarage of *Attenborough*, in the county of *Nottingham*, and diocese of *York*, dated respectively the fifteenth of *August* 1687, the twentieth of *September* 1743, the twenty-fifth of *June* 1779, and the eleventh of *June* 1777. from the said consistory court of the *Archbishop of York*; the deposition of *Thomas Cooke*; and a survey of the tithes payable to the rector of *Attenborough* being proposed to be read on the part of the defendants, and objected to by the counsel on the part of the plaintiff, and the said objection being allowed by the court, and the evidence rejected; and on reading the depositions of *Isaac Burton*, *Joseph Marriott*, and *Richard Cliff*;

TURNER
against
CHARLTON,

THE COURT ordered the deputy to take an account of what was due to the plaintiff, as vicar of *Attenborough* with *Bramcote*, in the county of *Nottingham*, for the tithes of all the wool, lambs, and agistment of barren and unprofitable cattle (except of stropers or barren cows) since the death of the last vicar on the ninth of *September* 1789; and of what was due for the tithe of the agistment of stropers or barren cows from the time aforesaid upon the foot of the *modus* of one penny for a stropper or barren cow in the defendant's answer mentioned; the deputy to tax the plaintiff, and the rector their costs.

TURNER against WILLIAMS.

Pembrokeshire, 14th December 1796.

MICH. TERM,
34 Geo. 3.

THE rector of *Rudbaxton*, in the county of *Pembrokeshire*, claimed, amongst other tithes, the tithe of agistment of all barren and unprofitable cattle on the land called *Temple Bowlings* and *Upper Bowlings*, in the occupation of the defendant, since 1791.

The rector of *Rudbaxton*, in *Pembrokeshire*, demands the tithe of agisting barren cattle. S. C. Anst. Rep. 829.

ren cattle. S. C.

The defendant admitted, that he occupied the said lands and grounds; that he had made hay thereon; that upon the other part thereof he had grazed his horses and beasts of the plough; but he said, that he had not kept, fed, or depastured any dry, barren, or unprofitable cattle thereon since *Lady Day* 1791, excepting that a beast or two might have by chance broke into

The defendant denies that he had depastured any barren cattle on the lands mentioned in the bill.

TURNER
against
WILLIAMS.

the said grounds without his consent. He further said, that those which had broke in were not permitted to stay there; that no titheable matters whatsoever, save as aforesaid, had arisen in respect of said lands to the plaintiff; that he was in nowise indebted to him in respect thereof; and that if any such titheable matters had arisen, that the same were very small and inconsiderable, and could not amount to more than a few shillings.

The cause
heard;

and issue directed to try the fact.

Verdict for the defendant.

The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides; and upon hearing counsel on both sides; and reading the depositions; an issue was directed to try, "Whether any barren and unprofitable cattle had been agisted upon any of the lands in the occupation of the said defendant *John Williams*, within the parish of *Rudbaxton*, in the county of *Pembroke*, in the pleadings of this cause mentioned, or the titheable places thereof, from *Lady Day* 1790 to the twentieth day of *October* 1792, the day on which the plaintiff's original bill appeared to have been filed in this cause;" and on the trial the jury found a verdict in favour of the defendant.

HILARY TERM
37. GEO. 3.

HILL against TINKER.

Devonshire, 14th December 1796.

The rector of *Justow*, in *Devonshire*, says, that in *August* 1784 he compounded with the defendant for his tithes from *Michaelmas* to *Michaelmas*, but that previous to

THE rector of *Justow*, in the county of *Devon*, claimed the great and small tithes; and stated, that he had in *August* 1784 compounded with the defendant for his tithes; that previous to *Lady Day* 1792 he sent a notice in writing to the defendant, that such composition should cease at *Michaelmas* 1792; and that at *Michaelmas* 1792 the defendant had refused to set out or pay his tithes in kind. The bill therefore prayed an account and payment of what should appear due thereon. *Lady Day* 1792 he gave him notice to determine it.

The defendant admits the dates both as to the agreement and notice to quit; but insists, that he ought to have had twelve months notice.

The defendant said, that previous to the month of *August* 1784, the plaintiff entered into an agreement with him to receive a composition of two shillings in the pound upon the rent or value of the land in his occupation, payable yearly at *Michaelmas* in lieu of his tithes, except of pigs, geese, and honey, which he was to pay in kind; that he had duly satisfied such annual composition up to *Michaelmas* 1792, and had also paid the tithes in kind of pigs, geese, and honey, up to that time; that such agreement was still subsisting and in force; that he had at all times since *Michaelmas* 1792 been ready and willing to pay the said composition; that he had tendered the same to the plaintiff, but that he had refused to accept it; and that he had paid the tithes in kind aforesaid as since *Michaelmas* 1792 as they became due. He admitted, that

that previous to *Lady Day* 1792; that is to say, on some day in the course of the month of *March* 1792, the plaintiff had caused a notice in writing to be delivered to him to the purport as stated in the bill; that he had never given him any other notice to determine the said composition; and he submitted, that in order to determine a composition, it was necessary in law to give at least *twelve months notice* preceding the *Michaelmas* at which the composition became due; and therefore he submitted, that he was not bound to account for the tithes in kind covered by the said composition. The defendant further insisted, that the plaintiff had in several conversations expressly agreed to abandon the said notice, and to continue the composition upon the terms of the original agreement.

HILL
against
TUCKER.

The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides: and upon hearing counsel on both sides; and on reading the proofs in the cause;

The cause
heard.

THE COURT ordered the bill to be dismissed, with costs.

The bill dismissed
with costs.

BEEVOR *against* TAYLOR.

MICH. TERM,
37. GEO. 3.

Norfolk, 16th December 1796.

THE rector of *Burlingham Saint Andrew*, with the parish of *Burlingham Saint Edmund*, in the county of *Norfolk* annexed, claimed, amongst other things, to the tithe of agistment of all dry, barren, or unprofitable cattle depastured or agisted for hire by the defendant within the said parishes on *Bungs Marsh*, part of *Hulvergate Marshes*, since the eighteenth of *June* 1789, particularly sheep not afterwards shorn in the said parishes, bullocks oxen, horses, and other cattle; and stated, that the said lands were situated in *Burlingham Saint Andrew*; that the marsh adjoined or was contiguous to certain other marshes situated within the said parish; that the occupiers thereof had always been assessed for the land tax, poor's rates, and church rates to *Burlingham Saint Andrew*; that the said marshes had immemorially belonged to the rectors of *Burlingham Saint Andrew*; that no *modus* was payable in lieu of the said tithes; that ten shillings a-year had been paid as a composition in lieu thereof; that the same was only temporary, and not prescriptive; that, and as evidence thereof, a mill was, in or about the year 1750, erected near to or upon part of the said marsh land, for the purpose of draining the water from the same; that the said land had been thereby greatly improved; that before the said improvement, ten shillings a year was the full value of the said tithe; that the said land was now worth twenty shillings an acre; and that the said sum of ten shillings had never been paid to him, nor had he ever agreed to accept the same, or any com-

The rector of
*Burlingham Saint
Andrew*, with
the parish of
*Burlingham Saint
Edmund*, in the
county of *Nor-
folk* annexed, is
entitled to agist-
ment tithes of
all dry, barren,
and unprofitable
cattle depastured
upon the estate
called *Bung's
Marsh*, part of
the large level
called *Hulver-
gate Marshes*.

BILLOR
against
TAYLOR

compensation for the said tithe. The bill therefore prayed an account.

The defendants said, that they had ever since the eighteenth of June 1789 occupied marsh land, part of the estate of John Burney; that the said estate is called *Bung's Marsh*; that it is at the distance of five miles from any church or parish; that it had always been considered *extra-parochial*; that the nearest parishes are *Tunstall* and *Wichampton*; that there are other parishes situate between the said parishes of *Burlingham Saint Andrew* and *Burlingham Saint Edmund*; that the said marsh land forms a part of a considerable level of marsh called *Hulvergate Marshes*; that they had no means of knowing, except by the annual payment of ten shillings a-year; whether the said marsh land in their occupation was or was not situated in the said parishes of *Burlingham Saint Andrew* and *Burlingham Saint Edmund*, or either of them; that they could not set forth the particulars of the said pieces of marsh ground, nor the abbuttals, boundaries, or other descriptions thereof; that they occupied no other marsh ground than as aforesaid; and that they had severally since the eighteenth of June 1789 kept, fed, and depastured, but not agisted for hire, upon the said marsh land, some sheep not afterwards shorn in the said parishes, and some oxen, bullocks, horses, and other cattle, for the agistment tithe of which they had not made him any satisfaction beyond the annual sum of ten shillings, which, for a considerable length of time, had been annually paid to the rector of the said parishes in lieu of all the tithes of the whole of the said marsh land in their occupation; that the same had been considered as an immemorial *modus*; the said John Burney had in his possession receipts for some of such payments; but that they could not set forth when such payments first commenced; and that if it was not a *modus*, it was binding upon the plaintiff as an *annual composition* up to the first of August 1792, it not having been determined by notice for that purpose till that date.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and upon hearing counsel on both sides; and reading the several proofs taken in the cause; and on full debate of the matter;

THE COURT ordered the deputy to take an account of what was due for the tithes of the agistment of sheep not shorn in the said parishes, and of the dry, barren, and unprofitable cattle which had been depastured upon the said marsh land since the eighteenth day of June 1789, with costs.

MACDONALD, Chief Baron.
HOTHAM, Baron.
THOMSON, Baron.

CHAYTOR

CHAYTOR against TRINITY COLLEGE, CAMBRIDGE. MICH. TERM,
37. Geo. 3.

Yorkshire, 17th December 1796.

THE bill stated, that the township or district of *Thoresby*, in the county of *York*, was, and immemorially had been an ancient township or district situate within the parish of *Aisgarth* in the said county; that it was known by certain well known limits and boundaries; that all the lands within the said township or district, and the owners and occupiers thereof, had immemorially been and ought to be exempt from the payment of grass tithe, whether the same be made into hay or eaten by the mouths of dry, barren, and unprofitable cattle, yearly arising on the said lands, or any satisfaction for the same, save and except the yearly *modus* of six shillings and eightpence to the rector on *Michaelmas Day*, old stile yearly, or as soon after as demanded; that the said *modus* had been paid on *Michaelmas Day* 1785; that no grass tithe had been then paid in kind; that all the lands in *Thoresby* are subject and liable to the payment of the said *modus*; that the defendants contriving to break the said *modus*, and to subject the plaintiff and others, the owners or occupiers of lands at *Thoresby*, to the payment of the said grass tithe, the College, who claimed the rectory of *Aisgarth* in their corporate capacity, subject to a lease made by them of the tithes to the defendant *Wood* for the term of twenty-one years, pretended that the said *modus* was only an annual payment in lieu of the tithes of such grass as was made into hay, and not in lieu of any other tithes; but the plaintiff charged, that it had constantly and uniformly been paid by the occupier, and received by the rector, in lieu of the tithes of all such grass, whether the same was made into hay or eaten by dry, barren, and unprofitable cattle; and that the said *J. R. Wood*, after he had obtained the said lease, was so conscious that no other satisfaction ought to be made for the said grass tithes, that he had actually accepted the same from the plaintiff *Chaytor*, in lieu of the said tithes due at *Michaelmas* 1785. The bill therefore prayed, that the said *modus* might be established.

The impropriator of the parish of *Aisgarth*, in *Yorkshire*, is only entitled to 6s 8d. a-year on old *Michaelmas Day*, in lieu of the tithe of grass, whether made into hay or fed with barren cattle, arising on *Chaytor's Estate* called *Thoresby*, in the township of *Carperby*, in the said parish.

S. C. Anst. Rep. 841.

See *Scarr v. Trinity College*, ante 494.

The master, fellows, and scholars of *Trinity College* in *Cambridge* said, that there had been for a considerable length of time, and still was a part of the parish of *Aisgarth*, called *Thoresby*; that it was distinguished and known by certain well-known limits and boundaries; that it consisted of a farm containing seven or eight hundred acres of land; that it belonged to the plaintiff *William Chaytor*, except one field, the property of *John Harland*; but whether the said part of the parish had been immemorially known and distinguished by the name of *Thoresby* they could not set forth; that it was not a township; that it is,
and

CHAYTOR
against
TRINITY
COLLEGE,
CAMBRIDGE.

and long, if not always, had been, parcel of the township of *Carperby*, in the said parish; that *Carperby* is an ancient township, and has its own officers, who act for or over the said part, as being parcel of the said township; and that they apprehended the said part could not properly be called a district. They denied the *modus* stated in the bill; but admitted, that the money had been paid to *Michaelmas* 1786, as a *composition* or money payment for and in lieu of the tithe of hay yearly arising on *Chaytor's Estate* in *Thoresby*; and they insisted, that it was for hay only, and not for grass eaten by the mouths of dry, barren, and unprofitable cattle, or made into hay.

The defendant *J. R. Wood* answered in like manner as to the estate called *Thoresby*; and denied the existence of the *modus*, and that it had been accepted by him as lessee or otherwise, as a *modus* in lieu of such grass tithes; but said, that it had for a number of years past, and until he became entitled to the tithes, been paid by the occupiers of *Chaytor's Estate* to the tithe gatherers, and accepted by them as a *composition* or money payment in lieu of the tithe hay arising in the said parish of *Thoresby*, and not for any other tithe whatsoever; that as lessee of the college, he had received for the year 1785 from *Chaytor*, for and on account of the occupiers of his estate, the said sum of six shillings and eightpence; that the said payment had not subsisted immemorially, for that at different times different sums had been paid by the said occupiers as a composition or money payment in lieu of tithe hay only arising upon the said estate, and that therefore the same was not a valid *modus*; but that if the same were a *modus*, it was a *modus* for tithe hay only and not for grass, whether cut or made into hay, and eaten by dry, barren, and unprofitable cattle.

The plaintiffs replied; the defendants rejoined; and witnesses were examined on both sides; and upon hearing counsel for all parties on the twenty-seventh day of *June* 1794 for several days; and reading the following evidence for the plaintiffs, viz. the depositions of several witnesses to several interrogatories taken in this cause; a lease, dated the twenty-eighth of *March* 1721, from the master, fellows, and scholars of *Trinity College* to *Josias Lambert* and others; a receipt, dated *May* 1785, from *William Sadler* to *William Chaytor*, with an indorsement thereon; and reading the following evidence for the defendants, viz. the depositions of several witnesses taken in the cause; an exhibit S. being the return of a receiver to *Trinity College*, intitled, "*Aisgarth Tithing Book*, 1675," which was objected to, but the objection over-ruled; exhibits intitled "*Aisgarth Rectory Tithe Books*," the receiver *Brown's* general accounts for several years; a receipt, dated the fifth of *February* 1763, from *William Brown* to *James Shaw* for six shillings and eightpence *modus* in lieu of hay tithe for

for his farm at *Thoresby*; a tithe book kept by *Alexander Metcalfe* in the year 1750; another tithing book relative to the Quakers, beginning in the year 1753, and ending in or about 1756; and hearing the plaintiff's counsel in reply; and upon full debate of the matter, the cause was ordered to stand over for judgment, and the same was pronounced accordingly this day by THE LORD CHIEF BARON.

CHAYTOR
against
TRINITY
COLLEGE,
CAMBRIDGE.

THE COURT directed an issue to try the *modus*; and ordered the plaintiffs in equity to be the plaintiffs at law; the defendants in equity to be defendants at law; the judge to indorse if any thing special should arise on the trial; the deposition taken in this cause, and in the original cause of *Wood v. Wray* to be read as evidence; and the consideration of costs and all further directions to be reserved until the *poslea* comes in.

The issue was tried accordingly by a special jury, and they found, "That from time whereof the memory of man was not
" to the contrary, there had been a township or district called
" *Thoresby*, in the parish of *Aisgarth*, distinguished by cer-
" tain well known limits and boundaries; and that all and every
" the lands and grounds situate, lying, and being within the
" said township or district, and the owners and occupiers thereof
" had been by ancient usage, custom, or prescription, exempt
" from the payment of grass tithes, whether the same was cut,
" or mown or made into hay, or eaten by the mouths of dry,
" barren, and unprofitable cattle yearly arising, growing, re-
" newing, or increasing in or upon the same lands or grounds
" without paying or making any satisfaction for the same, save
" and except the yearly *modus* or annual payment of six shil-
" lings and eightpence of lawful money of *Great Britain*, pay-
" able to the rector or rectors of the said rectory for the time
" being on *Michaelmas Day* in each year, according to the old
" stile or mode of computing time, or as soon after as demand-
" ed; and that the same, during the time aforesaid, had
" been paid or payable by all and every the owners and occu-
" piers of lands and grounds in the said township or district, or
" by some or one of them, for and on behalf of all of them,
" for and as a *modus* in lieu of the said grass tithes."

THE COURT, on the twenty-third of *November 1797*, on reading the decree and *poslea*, and hearing counsel for the defendants, ordered, by consent of all parties, the said *modus* of six shillings and eightpence, as found by the verdict, to be established, but without costs on either side; and that the order obtained by the defendants on the tenth of *November 1797*, for the plaintiffs to shew cause why a *new trial* should not be had, should be discharged.

A. MACDONALD.

B. HOTHAM.

R. PERRY.

A. THOMSON.

WOOD

HILARY TERM
37. GEO. 3.

WOOD *against* WRAY.

Yorkshire, 1st February 1797.

The lessee of the rectory of *Aisgarth*, in *Yorkshire*, claims the tithes of the parish in kind; and states,
S. C. Anst. Rep. 338.

that the defendants severally occupied farms, to which a right of common called *Cattle Gates*, on *Aisgarth Moor*, was annexed, and that they had fed barren cattle thereon;

that the said moor had been inclosed, and allotments thereof made to those farms which had a right of common thereon;

that they had also made hay on their meadow land;

that they had shorn sheep in the parish;

that they had also depastured cattle and sheep not shorn, on turnips;

that the several sums which had been paid in lieu of tithes were

only *compositions*, and not *modus*; and therefore he prayed an account.

The defendants say, that the farms they hold are *ancient farms*; that there are respective *modus* payable to the rector in lieu of the grass tithe thereof; and that some of the lands are tithe free.

THE plaintiff, as lessee of the rectory of the parish of *Aisgarth*, in the county of *York*, under *Trinity College* in *Cambridge*, claimed all tithes, oblations, obventions, and other dues yearly arising in the parish; and stated, that several of the defendants, in the years 1785 and 1786, had severally occupied farms therein, as described in the bill, and also divers beast gates, cattle gates, or other rights of common on certain moors, wastes, and commonable places therein; that some parts of the said farms consisted of new inclosed lands which were thencefore part of *Aisgarth Pasture* and *Aisgarth Moor*, in the township of *Aisgarth*; that the same had been then lately inclosed by virtue of an act of parliament; that the said parts so occupied were allotted to certain lands in lieu of a right of common, or some right of the kind on the said pasture or moor; and that the defendants had depastured upon their said farms, and on the said wastes or moors in which they had such common right, and on the said new inclosed lands respectively, horses, geldings, mares, foals, steers, heifers, geld sheep which were either not shorn in the said parish, or kept on after shearing time, lambs, dry cows, and other barren and unprofitable cattle. The bill further stated, that several of the defendants had, during the said years, certain meadow lands on which they had made hay. The bill further stated, that some of the defendants, during the said time, had grazed a number of sheep, from which they had shorn many fleeces of wool. The bill further stated, that the barren cattle which they had agisted on their farms were fed on turnips, and that they had agisted on their said farms, or on the said wastes or moors, sheep which were not shorn in the parish, or which were kept therein after shearing time. The bill then stated, that the plaintiff was entitled to the tithes of the said several matters in kind, but that the defendants, except the *Terry's* for their tithe hay, and *Richard Secule* for his tithe wool in the year 1786, had refused, under various pretences, to pay him the said tithes, and had set up several *modus* in lieu thereof, but he insisted, that they were not *modus* but temporary compositions. The bill therefore prayed an account of the *single value*, and payment of what should appear due thereon.

The defendants, by their several answers, admitted, that in the said years they held, some as owners and some as occupiers, several *ancient farms* in the parish of *Aisgarth*, as in their answers were particularly set forth, consisting of meadow and pasture

tire

ture lands, beast gates, cattle gates, and rights of common on certain moors, wastes, and other commonable places in the parish; and that they had depastured dry, barren, and unprofitable cattle thereon; but they denied that the plaintiff was entitled to the agistment tithes thereof: and they set up various exemptions and *modus*es in lieu of the tithes of grass yearly arising from their said farms, on account of their having been formerly *the Demefne Lands* belonging to *Jervaux Abbey* in the said county, that abbey having been of *the Cistercian order*.

Woo
grass
WAY.

The defendant *F. Chapman* admitted, that he occupied as owner certain lands in the township of *Thornton Rust*, parcel of an ancient estate in the said township.

The defendant *Chapman* says his ancient farm is in the township of *Thornton Rust*.

The defendant *G. Wray* admitted, that he occupied, as tenant, a farm in the township of *Thornton Rust*; and said, that the said farm was an ancient farm; that certain *modus*es were payable in lieu of the tithe of grass yearly arising thereon, whether made into hay, or eaten by the mouths of barren and unprofitable cattle; that is to say, with respect to the two ancient estates, part occupied by the defendant *Chapman* and part let to tenants, and the farm occupied by the defendant *Wray*, the ancient *modus*es or yearly sums of eightpence three farthings, one shilling and tenpence, and one shilling and a penny; and that the said last-mentioned *modus*es of one shilling and tenpence and one shilling and a penny were paid by the several owners or occupiers of such ancient farms in the proportions as described in the answers.

The defendant *Wray* says, that his farm is in *Thornton Rust*, and sets up a *modus* of 6s. 8d. a year in lieu of the grass tithes thereof, whether the grass be cut or eaten; and also other *modus*es as to other farms.
See ante, 507.

The defendant *C. Willis* admitted, that he and his brother *T. Willis* occupied a farm in the township of *Thoresby*; and he set up a *modus* of six shillings and eightpence a-year to the rector, in lieu of the tithes of grass yearly arising on the lands in the said township, whether made into hay, or eaten by the mouths of dry, barren, and unprofitable cattle.

The defendant *Willis* says, his farm is in the township of *Thoresby*, and sets up a *modus* of 6s. 8d. a-year in lieu of the grass tithes thereof, as in the case of *Obayor v. Trinity College*.
Ante, 507.

The defendant *T. Davis* admitted, that he occupied as owner, and that *J. Metcalf* held lands in *Mossdale* called *Mossdale Head*, within and parcel of *Hawe's Quarter*; and they said, that they had depastured dry, barren, and unprofitable cattle thereon; and insisted, that within the townships, hamlets, divisions, or districts of *Bainbridge*, *Ragdale Side*, and *Hawe's Quarter*, a *modus* of four shillings and fourpence at *Michaelmas* old stile yearly, or so soon after as demanded, was payable in lieu of all predial tithes whatsoever yearly arising upon the lands in the said ancient townships, hamlets, divisions, or districts of *Bainbridge*, *Ragdale Side*, and *Hawe's Quarter*.

The defendants *Dacre* and *Metcalf* say, they hold a farm in *Mossdale*, in *Hawe's Quarter* of the parish, and set up a *modus* of 4s. 4d. a-year in lieu of all predial tithes arising thereon, and in the several districts of *Bainbridge*, *Ragdale Side*, and *Hawe's Quarter*.
See *Scarr v. Trinity College*, ante, 494.

bridge, *Ragdale Side*, and *Hawe's Quarter*. See *Scarr v. Trinity College*,

The

WOOD
against
WRAY.

They also insist
on certain mo-
duses in lieu of
tithe milk;

and say, that
they had paid
the tithes of
calves and
lambs.

The defendants further said, that they had always been ready to pay to the plaintiff all such tithes or monies in lieu of the same as should appear to be due to him; and insisted on the *moduses* of twopence a milch cow that had a calf between *Michaelmas* and *Michaelmas* in every year, and one penny for every geld cow and cow of the first calf, in lieu of the tithe milk of such cows respectively. They also said, that the tithes of calves, lambs, and other young, or a compensation for the same had been paid to the plaintiff. They denied, that the tithes of corn, grain, hay, and other predial tithes had been at any time forborne to be paid, except as to those farms and lands which were wholly exempted from the payment of such tithes, or any composition or satisfaction for the same; and they set forth the quantities, qualities, and values of the titheable matters and things they had on their said lands and grounds, and the several *moduses* for their said farms and lands respectively; and denied that they had in their custody or power any receipts, deeds, tithing books, &c. relating to the matters in question; and insisted that the several exemptions and *moduses*, as stated in their several answers, covered the several titheable matters and things as demanded by the bill.

The cause
heard.

The plaintiff replied; the defendants rejoined; and divers witnesses were examined on both sides, and the cause came on to be heard the third day of *July* 1794; when upon hearing counsel on both sides, the cause was adjourned over to the fifth day of *February* 1795; when upon hearing counsel for the said plaintiff, and reading the following evidence on his behalf as to the *moduses* set up by the defendants *Wray* and *Chapman*, viz. an office copy of minister's accounts from the augmentation office of *Fervaux Abbey*, in the twenty-ninth year of *Henry the Eighth*, intitled, "*Recltorie de Aylesgarth*;" a tithing book of the collector of tithes for *Trinity College*, dated in 1675; a tithing book of *Alexander Metcalf*, another collector in the year 1750, under the head of *Thornton Rust*, and under *Letter H.*; several letters in *Metcalf's* Quaker's tithing book of hay charged upon occupiers, and their payments for it; the following entries in *Brown's account*, marked No. 3, in the year 1758, "To eighty Scotch ewes summered by *William Halloday*, four shillings;" "to sixty-six ditto by *Bernard Spence*, three shillings;" various entries in *Brown's books*, title "*Thornton Rust*," under the head of "*modus* for years 1758, 1759, 1760, 1761, 1764, and 1766;" and also reading the depositions of several witnesses; and it being admitted as well on the behalf of the defendants *G. Wray* and *F. Chapman*, as of several other the defendants, that they respectively had, within the times mentioned in the bill, agisted upon the several farms and lands occupied by them divers barren and unprofitable cattle, and

Admission made
on the part of
the defendants.

and also admitted by other of the defendants, who are to account for the tithes of wool and of turnips. that they had, within the times in the said bill mentioned, grown upon their farms and lands within the said parish certain quantities of turnips, and had also, within the time aforesaid, fed and depastured certain sheep on their farms and lands, and had taken the wool thereof; and upon hearing counsel fully on both sides for several days; and reading the following evidence for the said defendants, viz. the depositions of several witnesses taken in this cause; a lease, dated the twenty-eighth of March 1721, from Trinity College to J. Lambert and others; the depositions taken in the cause on behalf of the plaintiff, the cause was further adjourned to the twenty-fourth day of January 1797; when counsel was further heard on both sides; and

Wool
and
Wheat.

The cause ad-
journed.

THE COURT ordered the deputy to take an account of what was due from G. Wray and F. Chapman, for the tithes demanded by the bill.

Wray and Chap-
man decreed to
account.

THE COURT, with respect to the defendants C. Willis and T. Willis, ordered the bill to be retained as to the *modus* set up by them, and that the same do await the event of the trial of the issue directed by this court to be tried in the *cross cause*, wherein William Chaytor and they are plaintiffs, and Wood and Trinity College defendants.

The bill as to the
modus set up by
Willis retained
until the cause
of Chaytor v. the
College were
tried.

THE COURT, with respect to the defendants T. Davis and J. Metcalfe, further ordered the bill to be retained as to the *modus* set up by them, and that the same do await the event of the trial of the issue directed to be tried in a certain other *cross cause*, wherein J. Scarr and the aforesaid defendants and others are plaintiffs, and the said Trinity College and said plaintiff are defendants.

The bill as to the
modus set up by
Davis and Met-
calfe retained un-
til Scarr v. the
College was tried.

THE COURT further ordered the deputy to take an account of what was due from the defendant R. Harper, and several others respectively, for the several tithes which had arisen upon the farms in their respective occupations, as demanded by the bill.

R. Harper de-
creed to account.

THE COURT further ordered the deputy to take an account of what was due from the defendant J. Paley the younger for the several tithes demanded by the bill, arising upon the two several farms in the township of Burton cum Walden.

J. Paley decreed
to account.

THE COURT, with respect to the defendant J. Richardson and several others, further ordered the consideration of the tithes demanded to be adjourned for further consideration.

The case as to
J. Richardson
adjourned.

THE COURT also declared, that the plaintiff was entitled to the tithes of wool and turnips, as demanded by the bill; and thereupon ordered the deputy to take an account of what was due from W. Banks and several others, for the tithes of wool; and from

Banks and Sunter
ordered to pay
tithe wool and
turnips.

Wood
against
WARD.

the defendant *R. Sumter* and several others for the tithes of turnips, as demanded by the bill.

The cause adjourned, and evidence rejected.

The cause was then ordered to stand over to the thirty-first of *January* 1798, when counsel was again heard on both sides; and the depositions of *J. Wetherell* on behalf of the defendant *J. Richardson*, on the objection of the plaintiff's counsel rejected;

J. Richardson decreed to account.

THE COURT further ordered the deputy to take an account of what was due from *J. Richardson* for the several tithes demanded by the bill.

Sadler and Wilson ordered to account.

THE COURT also, upon reading the depositions of *W. Brown* to the third, fifth, and sixth interrogatories, and *B. Spence* to the third interrogatory, further ordered the deputy to take an account of what was due from *W. Sadler* and *M. Wilson* for the tithe of agistment of all such dry, barren, and unprofitable cattle as had been depastured by them upon the farms and lands in their occupation, as demanded by the bill.

Issues directed to try,

THE COURT, upon reading the several answers of the following defendants, and the depositions of the said witnesses, and also of *J. Beverley* and *William Loble* to the said interrogatories, ordered a trial at law upon the following issues, to wit,

Whether 9d. is payable for the grass tithe of the farm called *Dovefear*, in the township of *Burton cum Walden*.

FIRST, "Whether, from time whereof the memory of man is not to the contrary, there hath been a certain ancient farm within the township of *Burton cum Walden*, in the parish of *Aisgarth*, called *Dovefear*; and whether, from time whereof the memory of man is not to the contrary, there hath been an ancient yearly *modus* or sum of ninepence constantly and uniformly paid at *Michaelmas* in each year, according to the old stile or method of computing time, or so soon after as demanded by this defendant, and all other the former owners or occupiers of the said ancient farm lands or grounds in the occupation of the defendant *J. Harrison*, to the rectors of the said rectory for the time being, their farmers, tithe-gatherers, or agents, for or in lieu and full satisfaction for the tithes of grass yearly arising, growing, increasing, renewing in, upon, or from the said ancient farm and lands called *Dovefear*, whether cut or made into hay, or eaten by the mouths of dry, barren, and unprofitable cattle."

2s. for *Whiteraw*.

SECONDLY, "To try the *modus* of two shillings, as stated in the answer of the defendant *William Banks*, for his ancient farm, lands, and grounds called *Whiteraw*, within the township afore said."

1s. 4d. for *Dale Fec*.

THIRDLY, "To try the *modus* of one shilling and fourpence, as stated in the answer of the defendant *James Mudd*, for his

“ his ancient farm lands or grounds called *Dale Foot*, within
 “ the district of *Bishop Dale*.”

WOOD
 against
 WARD.

FOURTHLY, “ To try the *modus* of one shilling and four-
 “ pence, as stated in the answer of the defendant *Francis Terry*,
 “ for his ancient farm, lands, or grounds called *West How Gill*,
 “ within the district aforesaid.”

1s. 4d. for *West
 How Gill*.

FIFTHLY, “ To try the *modus* of twopence halfpenny, as
 “ stated in the answer of the defendant *Alexander Thomson*, for
 “ his ancient farm, lands, and grounds called *the Coat*, within the
 “ township of *Burton cum Walden*.”

2½d. for *the Coat*.

SIXTHLY, “ To try the *modus* of three shillings and four-
 “ pence, as stated in the answer of the defendant *Michael Wil-*
 “ *son*, for his ancient farm, lands, and grounds called *Highgill*,
 “ within the township of *Aisgarth*.”

3s. 4d. for *High-
 gill*.

SEVENTHLY, “ To try the *modus* of fivepence, as stated in
 “ the answer of the defendant *Jane Ryder*, for her ancient farm,
 “ lands, and grounds called *Haw Rain*, within the township of
 “ *Burton cum Walden*.”

5d. for *Haw
 Rain*.

EIGHTHLY, “ To try the *modus* of eightpence, as stated in
 “ the answer of the defendant *William Robinson*, for his ancient
 “ farm, lands, or grounds called *Edgley*, within the township
 “ aforesaid.”

8d. for *Edgley*.

THE COURT further ordered the deputy to take an account
 of what was due from the said defendant *W. Robinson* for the
 tithes of agistment of all such dry, barren, and unprofitable cat-
 tle as were fed, kept, and depastured by him upon *the Allotment*
 of the common called *Aisgarth Pasture*, as demanded by the
 bill.

Robinson decreed
 to account for
 agistment tithes
 of the allotment
 of *Aisgarth Moor*.

NINTHLY, “ To try the *modus* of tenpence, as stated in the
 “ answer of the defendant *Richard Johnson*, for his ancient farm,
 “ lands, or grounds called *Sorrowfikes*, within the township afore-
 “ said.”

10d. for *Sorrow-
 fikes*.

THE COURT further ordered the deputy to take an account of
 what was due from the said *Richard Johnson* for the tithe of
 agistment of all such dry, barren, and unprofitable cattle as
 were fed, kept, and depastured upon five acres of land in his
 occupation, not part of the said farm called *Sorrowfikes*.

Johnson decreed
 to account for a
 agistment tithe
 on other lands.

THE COURT further ordered the deputy to take an account of
 what was due from the defendant *Jeffery Wood* for the tithe of
 hay which had arisen upon the farm and lands in his occu-
 pation, as demanded by the bill.”

Wood decreed to
 account for tithe
 hay.

TENTHLY, “ To try the *modus* of elevenpence halfpenny,
 “ as stated in the answer of *James Broughton* and *Peter Clarkson*,

11½d. for *Pratt's
 Land*.

Wood
against
Wray

The defendants
in equity to be
plaintiffs.

Broughton de-
creed to account
for the tithes of
Kitley Bank.

The considera-
tion of costs and
further direc-
tions reserved.

“ for a certain ancient farm, lands, or grounds (which lately
“ belonged to *Mrs. Pratt*), within the township of *Afkrigg*.”

The defendant or defendants in equity in each of the said
issues to be the plaintiffs at law; and the plaintiff in equity to be
defendant at law; the Judge to indorse; with the usual di-
rections.

THE COURT further ordered the deputy to take an account of
what was due from the said defendant *James Broughton* for the
tithes of hay arising upon his said farm called *Kitley Bank*, as
demanded by the bill.

THE COURT also ordered the consideration of costs, and all
further directions touching the said accounts and the trial of the
said issues, to be reserved until the said deputy remembrancer
should make his report as to the said accounts, and until the
trial of the said issues should be had.

THE COURT FULL.

HILARY TERM
37. GEO. 3.

BLIGH against BAINBRIDGE.

Yorkshire, 9th February 1797.

The rector of
Romaldkirk, in
Yorkshire, claims
all the tithes,
great and small,
in kind, except
the tithes of corn
and hay, in lieu
of which he received compositions.

THE rector of *Romaldkirk*, in the county of *York*, claimed all
the great and small tithes which had arisen on the several
farms occupied by the defendants in the parish since his induction
into the rectory in the month of *April* 1787 in kind, except the
tithes of corn and hay in lieu of which he received compositions.

The defendants
admit, that the
rector is entitled
to the tithes of
apples, lambs,
wool, pigs, tur-
kies, and geese,
in kind; and
insist,
that those pay-
ments which he
calls compositions,
in lieu of corn
and hay only,
are *modus*es in
lieu of the tithes
of corn, hay, a-
gistment, and all
other predial
tithes whatsoever;

The defendants, by their several and joint answers, admitted,
that the plaintiff was entitled to the tithes, both great and small,
arising in the parish, or to *modus*es or compositions in lieu thereof,
in manner following, that is to say, to the tithes in kind of calves,
lambs, wool, pigs, turkies, and geese, but not of potatoes, turnips,
pease, beans, and rape, or to any tithe of the agistment of barren
and unprofitable cattle, for that the monies paid in lieu of the
tithes of corn and hay were not compositions in lieu of those tithes
only, but were *modus*es in lieu of the tithes of agistment and all
other predial tithes whatsoever, and had been received in discharge
thereof until the year 1792. They further said, that the parish
of *Romaldkirk* was divided into various ancient villis or townships,
which were respectively distinguished and known by certain well
known limits and boundaries; that all the lands therein had im-
memorially been exempt from the payment of the tithes of agist-
ment, and that such *modus*es are payable by the owners and occupiers of lands in the
several townships of the parish respectively.

ment,

ment, and all other predial tithes whatsoever, or any satisfaction in lieu thereof, save and except certain *modus*es that were respectively paid, by the owners or occupiers of the several lands in each respective vill or township, to the rector or his lessee, at certain and fixed times in each year; and that the said *modus*es were what the plaintiff called *compositions*, and admitted to be in lieu of the tithes of corn and hay.

Defendants
against
Plaintiff

The defendants *M. Bass, R. Bell, T. Ewbank, and J. Terry*, said, that the whole of the lands in their occupation were situate in the township of *Lartington*; and that they, being no part of the lands in the vill of *Lartington*, were called *the Out Places*; that the vill or township of *Lartington* had been immemorially an ancient vill or township in the parish of *Romaldkirk*, and distinguished by certain well known limits and boundaries; that all the lands in the said vill or township, besides the said lands in the said vill or township of *Lartington*, called *the Out Places*, which were also distinguished by certain well known limits and boundaries, and the owners and occupiers thereof had been immemorially, and ought to be exempt from the payment of agistment and all other predial tithes whatsoever yearly arising upon the lands and grounds, or any satisfaction for the same, save and except the yearly *modus* of five pounds, thirteen shillings, and fourpence, to the rector or to his lessee, payable by two half-yearly payments, in manner following, that is to say, the sum of two pounds, sixteen shillings, and eightpence, part of the said *modus* on the feast-day of *Saint Mark the Evangelist* in each year old stile, or within fourteen days next after the feast day, or so soon after as demanded; and the sum of two pounds, sixteen shillings, and eightpence, the remaining part of the said *modus*, on the feast-day of *Saint Michael the Archangel* old stile, or within fourteen days next after that feast-day, or so soon after as demanded; that the *modus*es had been immemorially paid by the owners or occupiers of the lands in the said vill or township of *Lartington*, exclusive of the lands in the said vill called *the Out Places*, or any of them, or by one of them for and on behalf of all of them, to the rector or to his lessee, as a *modus* in lieu of all the tithes of agistment and all predial tithes whatsoever arising upon the lands in the said vill or township (exclusive of the lands called *the Out Places*, or any of them); that the said *modus* was immemorially accepted, by the rector or his lessee, in lieu of all such tithes; that the said *modus* was one of the payments mentioned by the plaintiff as a *composition* in lieu of the tithes of corn and hay only; and that, as evidence that it was a good and lawful *modus*, and not a *modern composition*, no tithes of agistment, or other predial tithes whatsoever, had, at any time within the memory of man till the time after-mentioned, been paid to, or received, claimed, or demanded, by any of the rectors, or their lessee or lessees of the tithes of

The defendants *Bass, Bell, Ewbank, and Terry*, set up a *modus* of 5l. 10s 4d. a-year, in lieu of the lands in the township of *Lartington*, exclusive of those lands in the township which are called *the Out Places*.

BLIGH
against
BAINBRIDGE,

the said parish, by or from the owners or occupiers of the lands in the vill or township of *Lartington* (besides the lands and grounds called *the Out Places*), or by or from the occupiers of lands and grounds within any of the other vills or townships within the said parish. The said defendants set forth a particular account and description of all the farms, lands, and grounds within the said parish, which had, at any time since *April 1787*, been in their occupation; the names of the closes and fields; the descriptions, quantities, qualities, natures, the yearly rent, the value; the persons under whom the same were held and rented; the produce thereof (except corn and hay); and the quantities of potatoes, pease, beans, and rape, they had respectively had thereon in each year, and the value thereof. They also set forth an account of the number and quantity of calves, lambs, wool, pigs, and poultry, and of barren and unprofitable cattle, and other titheable matters and things, and the values, and the tithes thereof; and denied, that they had ever concealed any of their titheable matters and things from the said plaintiff, but had been willing and desirous to pay and allow him what was justly due to him; and said, that no objection was ever made as to the payment of the said *modus*, but that the same, as well as the tithes, were regularly paid and received till the year 1792, when the plaintiff refused any longer to receive the same; and they hoped that they should be benefited by the said *modus* as if they had pleaded the same. They admitted, that notice was given, as to setting out tithes in kind, by printed hand-bills being distributed in the said parish, and pasted on the door of the said parish-church, viz.
“ Romaldkirk, November the second, 1792. The Reverend Mr. Bligh, rector of this parish, hereby gives notice, that a bill will be filed in the court of exchequer against every parishioner who refuses or neglects to settle with his agent, upon demand, for the tithe of potatoes, turnips, pease, beans, rape, and agistment, for the last and present year.”

Notice to pay
tithes in kind.

The defendant *T. Ewbank* said, that some time in the month of *June* in 1793, he was served with a notice in writing, viz.
“ Within one month from the date hereof, you will please to pay to the Reverend Mr. Bligh, of Romaldkirk, the amount of the tithes due to him from you, and the expence of this letter, otherwise a bill in the exchequer is intended to be filed against you. The twenty-ninth of June 1793.”

The defendants
W. Bell and *J. Lamb* set up a
modus of 4l. 4s.
7d. for the lands
in the township
of *Romaldkirk*.

The defendants *W. Bell* and *J. Lamb* said, that they occupied lands in the vill or township of *Romaldkirk*; and they set up a *modus* of four pounds, four shillings, and sevenpence, as hereafter mentioned.

The

The defendant *H. Bainbridge* said, that the lands in his occupation were known by the name of *West Park*, and are part of the park situated in that part of the said parish called the township of *Lune Dale*; and the defendant *J. Rain* said, that the lands in his tenure are known by the name of *East Park*, the remaining part of the said park, situated in the said township; and they said, that the said park, from time whereof the memory of man was not to the contrary, had been an ancient farm and grounds, distinguished and known by well known limits and boundaries; and that, by ancient usage, custom, or prescription, the said ancient farm and lands, and the owners and occupiers thereof, from time whereof the memory of man was not to the contrary, had been, and ought to be, exempt from the payment of any tithe whatsoever, either great or small, yearly arising, &c. upon or from the said ancient farms or lands, or any satisfaction for the same, save and except a yearly *modus* or annual payment of six shillings and eightpence, of lawful money of *Great Britain*, to the rector of the said rectory of the parish-church of *Romald-kirk* for the time being, or to his lessee or lessees of the tithes of the said parish, at the feast-day of *Saint Mary Magdalen* in each year, according to the old stile of dates, or on the *Sunday* next after that feast-day, or so soon after as demanded; and that the said *modus* had been constantly paid and received until the time aforesaid. They also said, that they occupied *Wemmergill Farm*, situated within the said township of *Lune Dale*, which belonged to *William Birch, Esquire*, or to those under whom he claimed; and that it had been usual and customary for his steward to pay to the rector of the parish, or his lessee, the said *modus* of six shillings and eightpence, together with a *modus* of three shillings and fourpence for *Wemmergill Farm*, for which said two *moduses*, making together ten shillings yearly, he had been accustomed to take a receipt from the rector or his lessee, wherein the same had been expressed as a prescription or quit rent for *the Park* or *Wemmergill Farm*, due at *Magdalen Day*.

**Bill
against
BAINBRIDGE.**

The defendants *Bainbridge* and *Rain* set up a *modus* of 6s 8d. for the lands in *Lune Dale*, called *West Park*;

and 3s. 4d. for *Wemmergill Farm*.

The defendant *H. Bourne* said, that the lands in his occupation were situated in the township of *Mickleton*, in the said parish: and he set up a *modus* of ten pounds.

The defendant
H. Bourne sets up a *modus* of 10l. for the lands in the township of *Mickleton*.

The defendant *T. Helmer* said, that the lands in his occupation were situated in the said township; and that, by ancient usage, &c. all and every the lands and grounds therein, and the owners or occupiers thereof, from time whereof the memory of man was not to the contrary, had been, and ought to be, exempt from the payment of the tithes of agistment, and all other predial tithes whatsoever, yearly arising, &c. upon or from the same lands and grounds, or any satisfaction for the same, save and except the yearly *modus* or annual payment of ten pounds of lawful money to the rector or his lessee, as before stated; that the

The defendant *Helmer* sets up a *modus* of 2l. 1s. for the lands in the township of *Hundershowire*, exclusive of the lands called *Henry Doe Park*, *West End*, *the Dale*, and *the Out Places*;

*Bainbridge
against
Bainbridge.*

remaining part of lands and grounds in his occupation within the said parish were in the township of *Hunderthwaite*, but were no part of certain lands in that township, called *Hury Doe Park, West End, the Dale, and the Out Places*; that the said township was an ancient township in the said parish, and known by its boundaries; and that all the lands therein, exclusive of *Hury Doe Park, West End, the Dale, and the Out Places*, and the owners or occupiers thereof, had been immemorially exempt from the payment of tithes of agistment, and all other predial tithes whatsoever, yearly arising upon or from the said lands (exclusive as aforesaid), or any satisfaction for the same, save and except the yearly *modus* of two pounds, one shilling.

and they say, that the rector had accepted the said *modus* to 1792.

All the defendants insisted upon the aforesaid several *modus*; and said, that they had all been regularly paid to and received by the said plaintiff for and in discharge thereof till 1792, when he refused any longer to receive and accept the same in lieu and discharge of any other tithes whatsoever, except the tithe of corn and hay only: and they hoped that they should have the same benefit of the said *modus* and payments as if they had respectively pleaded the same.

The cause heard.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and the cause came on to be heard the twenty-sixth of *January* last; and after hearing counsel for the respective parties several days; and reading the several answers of the said defendants; and the proofs taken in the cause;

The tithes of *West Park* and *Wemmergill Farm* decreed in kind.

THE COURT ordered the deputy to take an account of the tithes of the titheable matters demanded by the bill substracted by the defendants *Bainbridge* and *Raine*, with costs, to be taxed for the plaintiff, but without prejudice to any defence which the said defendants may set up on any future occasion.

Tithes of calves decreed.

THE COURT also ordered the said deputy to take an account of the tithes of calves substracted by the defendant *Bourne*, with costs.

Tithes of wool and lambs decreed.

THE COURT also ordered an account of the tithes of calves, wool, and lambs, substracted by the defendant *Helmer*, with costs.

Issues directed to try,

THE COURT further ordered one or more trial or trials at law on the following issues:

The *modus* of 5l. 13s. 4d. as to the township of *Lartington*.

FIRST, "Whether a *modus* or yearly sum of five pounds, thirteen shillings, and fourpence, from time whereof the memory of man is not to the contrary, hath constantly and uniformly been paid by the owners or occupiers of the lands or grounds within the vill or township of *Lartington*, exclusive of the lands in the said vill of *Lartington*, called or known by "the

the names of *the Out Places*, or any of them, or by one of them, for and on behalf of all of them, to the rector of the said rectory of the parish-church of *Romaldkirk*, in the pleadings of this cause mentioned, for the time being, or to his lessee or lessees of the tithes of the said parish, and by him duly and constantly accepted and received in manner following (that is to say), the sum of two pounds, sixteen shillings, and eightpence, part thereof, on the feast of *Saint Mark the Evangelist* in each year, according to the old stile of dates, or within fourteen days next after the said feast-day, or so soon after as demanded, and two pounds, sixteen shillings, and eightpence, the remaining part of the said *modus* or annual sum of five pounds, thirteen shillings, and fourpence, on the feast-day of *Saint Michael the Archangel* in each year, according to the old stile of dates, or within fourteen days next after that feast-day, or so soon after as demanded, as a *modus* or yearly payment for and in lieu of all the tithes of agistment, and all other predial tithes whatsoever, arising, renewing, happening, or increasing, upon or from all the lands or grounds within the said vill or township of *Lartington* (besides and exclusive of all the lands and grounds within the said vill or township of *Lartington*, called or known by the names of *the Out Places*, or any of them."

Below
lying
BARNARDON.

SECONDLY, "Whether a *modus* or yearly sum of four pounds, four shillings, and fourpence, from time whereof the memory of man is not to the contrary, hath constantly and uniformly been paid by the owners or occupiers of the lands or grounds within the vill or township of *Romaldkirk*, or by one of them, for and on behalf of all of them, to the rector of the said rectory of the parish-church of *Romaldkirk* aforesaid for the time being, or to his lessee or lessees of the tithes of the said parish, and by him duly and constantly accepted and received in manner following (that is to say), the sum of two pounds, two shillings, and fourpence, part of the said *modus* or annual payment of four pounds, four shillings, and sevenpence, on the feast-day of *Saint Mark the Evangelist* in each year, according to the old stile of dates, or within fourteen days next after the said feast-day, or so soon after as demanded, and the sum of two pounds, two shillings, and threepence, the remaining part of the said *modus* or annual payment of four pounds, four shillings, and sevenpence, on the feast-day of *Saint Michael the Archangel* in each year, according to the old stile of dates, or within fourteen days next after that feast-day, or so soon after as demanded, as a *modus* or yearly payment for and in lieu of all the tithes of agistment, and all other predial tithes whatsoever, yearly arising, renewing, happening, or increasing, upon or from all the lands and grounds within the said vill or township of *Romaldkirk*."

The *modus* of
4l. 4s. 7d. as to
the township of
Romaldkirk.

THIRDLY,

ELIGH
against
BAINBRIDGE.
The *modus* of
vol. as to the
township of
Mickleton.

THIRDLY, "Whether a *modus* or annual payment of ten pounds, from time whereof the memory of man is not to the contrary, hath constantly and uniformly been paid by the defendants *Henry Bourne* and *Thomas Helmer*, or the owners or occupiers of the lands and grounds within the vill or township of *Mickleton*, or by one of them, for and on behalf of all of them, to the rector of the rectory of the parish-church of *Romaldkirk* aforesaid for the time being, or to his lessee or lessees of the tithes of the said parish, and by him duly and constantly accepted and received in manner following (that is to say), the sum of five pounds, part of the said *modus* or annual payment of ten pounds, on the feast day of *Saint Mark the Evangelist* in each year, according to the old stile of dates, or within fourteen days next after the said feast-day, or so soon after as demanded, and the sum of five pounds, the remaining part of the said *modus* or annual payment of ten pounds, on the feast-day of *Saint Michael the Archangel* in each year, according to the old stile of dates, or within fourteen days next after that feast, or so soon after as demanded, as a *modus* or yearly payment for and in lieu of all the tithes of agistment, and all other predial tithes whatsoever, yearly arising, renewing, happening, or increasing, upon or from all the lands and grounds within the said vill or township."

The *modus* of 2l.
4s. as to the
township of
Hunderthwaite.

FOURTHLY, "Whether a *modus* or yearly sum of two pounds, one shilling, from time whereof the memory of man is not to the contrary, hath constantly and uniformly been paid by the defendant, or the owners or occupiers of the lands and grounds within the vill or township of *Hunderthwaite* (other than and exclusive of the lands and grounds in the same vill or township of *Hunderthwaite*, called or known by the names of *Hury Doe Park*, *West End*, and *the Dale*, and *Out Places*, or any of them), or by one of them, for and on behalf of all of them, to the rector of the parish-church of *Romaldkirk* aforesaid for the time being, or to his lessee or lessees of the tithes of the said parish, and by him duly and constantly accepted and received in manner following (that is to say), the sum of one pound and sixpence, part of the said *modus* or annual payment of two pounds, one shilling, on the feast of *Saint Mark the Evangelist* in each year, according to the old stile of the dates, or within fourteen days next after that feast-day, or so soon after as demanded, and the sum of one pound and sixpence, the remaining part of the said *modus* or annual payment of two pounds, one shilling, on the feast day of *Saint Michael the Archangel* in each year, according to the old stile of dates, or within fourteen days next after that feast-day, or so soon after as demanded, as a *modus* or yearly payment for and in lieu of all the tithes of agistment, and all other predial tithes whatsoever,

“ whatsoever, yearly arising, renewing, happening, or increasing
 “ upon or from all the lands and grounds within the said vill or
 “ township of *Hunderthwaite* (other than and exclusive of the
 “ aforesaid lands and grounds in the same vill or township of
 “ *Hunderthwaite*, called or known by the names of *Hury Doe*
 “ *Park*, *West End*, and *the Dale*, and *the Out Places*, or any of
 “ them.”

Bliss
 against
 BAINBRIDGE.

The defendants in equity to be plaintiffs at law ; the plaintiff in equity the defendant at law ; the Judge at liberty to indorse any thing special, with the usual directions ; and the consideration of costs not herein before directed, and all further directions, to be reserved.

The defendants
 in equity to be
 plaintiffs at law.

A. MACDONALD.
 B. HOTHAM.
 R. PERRY.
 A. THOMSON.

WELLAND against YONGE.

Devonshire, 27th February 1797.

HILARY TERM
 37. GEO. 3.

THE rector of *Tallaton*, in the county of *Devon*, claimed the great and small tithes yearly arising therein.

The rector of
Tallaton, in *De-*
vonshire, is enti-
 tled to the great
 and small tithe of
Escott House, and
 the lands thereto
 belonging, in-
 cluding *Escott*
Meadow, *the Up-*
per Meadow,
 and all other the
 lands in the *Bar-*
ton of Escott, in
 kind.

The defendant admitted, that he was the owner and occupier of *Escott House*, with the offices and lands in the parish thereto belonging ; denied that the plaintiff was entitled to the great and small tithes arising in the *Barton of Escott*, or any part thereof ; and insisted, that a *modus* of twopence an acre for *Escott Meadow*, and five shillings an acre for the *Upper Meadow*, was payable in lieu of the tithe thereof at or upon *Michaelmas Day* in each year, if demanded ; that all other the land and premises, parcel of the said *Barton*, had been immemorially exempt from all manner of tithes whatsoever ; that there never had been any other money or tithes whatsoever paid to or demanded by the said rector than aforesaid ; but that if he should not be able to substantiate the said *modus*, he was willing to be examined touching the tithes due from him, and to account with the plaintiff for the same.

The plaintiff replied ; the defendant rejoined ; but no witnesses were examined on either side ; and upon hearing counsel on both sides ; and reading the defendant's answer ;

THE COURT ordered the deputy to take an account of what was due for the tithes as prayed by the bill, with costs.

HORNBUCKLE

HILARY TERM
37. GEO. 3.

HORNBUCKLE *against* ADDINGTON.

Bedfordshire, 28th February 1797.

The vicar of Goldington, in **T**HE vicar of Goldington, in the county of Bedford, claimed the small tithes of the parish in kind since Michaelmas 1793. claims the small tithes of Berry Farm, of the Fifty-Nine Acres, and the Hundred and Eighty-Six Acres, in kind.

The defendant insists on a *modus* of 4l. a year in lieu of the small tithes of Berry Farm; and says, that no tithes had ever been paid, or before demanded, for the Fifty-Seven and the Hundred and Eighty-Six Acres.

The defendant said, that the plaintiff had, up to Michaelmas 1793, invariably accepted a *modus* or customary payment of four pounds *per annum*, by two half-yearly payments, in lieu of the small tithes of his lands called Berry Farm; and insisted on the said *modus*; and said, that no tithe of any kind had been demanded of him, or of any other occupier, in respect of the Fifty-Seven Acres of land occupied by him; that the same were tithe free, as having been part of the dissolved monastery of Newnham; and that the small tithes of the residue of his lands, being about one hundred and eighty-six acres, had been very trifling in value; that in some years no tithes had accrued due; and he described the lands he held in the parish, and the titheable matters he had had thereon.

The cause heard.

The plaintiff replied; but no witnesses were examined on either side; and upon hearing counsel on both sides; and reading, on behalf of the plaintiff, a book from the registry of the Bishop of Lincoln, intitled, "*Liber Antiquus de Ordinatione & Vicar. Tempore Hugonis Wells 1209*;" and reading the endowment of the said vicarage of Goldington, contained in the said book;

The tithes of the Fifty-Seven and the Hundred and Eighty-Six Acres decreed.

THE COURT ordered the deputy to take an account of what was due for the tithes of the fifty-seven acres and one hundred and eighty-six acres of land respectively, with costs.

The bill dismissed as to the rest of the lands.

But THE COURT further ordered the bill, so far as it respected the tithes of the other lands in the occupation of the defendant, to be dismissed without costs.

MACDONALD, Chief Baron.
HOTHAM, Baron.
PERRY, Baron.

EASTER TERM
37. GEO. 3.

HALL *against* MACHET.

Norfolk, 26th May 1797.

The rector of Ellingham, in **T**HE rector of Ellingham, in the county of Norfolk, claimed all tithes yearly arising in the parish; and stated, that the defendant Machet had been, for many years, in possession of a farm

farm therein, on which he had made considerable quantities of hay, kept mares which had bred colts, and cows which had produced calves and milk; that he had also standing thereon many pollards and other trees not being timber trees of the growth of twenty years, and had grubbed up many of the pollards and other trees; that he also had considerable quantities of garden stuff, apples, pears, and other titheable matters; that he had also agisted thereon dry, barren, and unprofitable cattle, and had in one year grown turnips, on which he had occasionally depastured barren and unprofitable cattle until they had eat up the said turnips; that he also occupied water corn mills, called *Ellingham Mills*; that the defendant *M. Kerrison*, in the year 1785, erected certain new water corn mills in the said parish; and that both he and the defendant *Machet* had yearly ground considerable quantities of corn and grain at the said mills, and received large sums of money for the same; but that they had refused to pay the tithes of all or any of the said titheable matters, under pretence of certain agreements. But the bill charged, that all compositions between the plaintiff and *Machet* concerning tithes were finally determined, and that he had paid and set forth in kind the tithes of all the titheable matters which had arisen on his farm since *Michaelmas* 1788, except as after-mentioned; and that he, the plaintiff, was not bound by any agreement whatsoever to accept any composition for the tithes aforesaid, but was entitled to the same in kind. The bill then further stated, that within the said parish of *Ellingham* and the titheable places thereof there had been an immemorial custom, that every respective occupier of lands lying within the said parish of *Ellingham*, or the titheable places thereof, in respect whereof the tithe of hay is payable, shall, before he sets out the tithe of any hay which has arisen upon such lands so occupied by him in the said parish or the titheable places thereof, give a reasonable notice to the rector of the said parish, his servants or agents residing in the said parish, at the time when he intends to set out the tithe of such hay, and the place where such hay so intended to be tithed is situated, that the said rector, his tenants, or agents, may attend to see the same duly set out; and charged, that the defendant *J. Machet* had, at various times, given the plaintiff notice to attend to see the tithe of hay set out upon some of his said grounds; but that the said hay was not in a titheable state, for that part of the hay only on each piece of ground respectively was gathered into heaps, and other parts thereof cut down and spread abroad, and other parts untithed; and that when his hay was in a titheable state, that is, when it was gathered into proper heaps for tithing, the defendant did not give reasonable notices. The bill then further charged, that the said defendant had not set out the tithe milk of his cows in each year, or that if he had, that within the said parish there

was

that
against
MACHET.

and says, that the defendant had cut down pollards and other trees not being timber trees;

that he occupied the water corn-mill called *Ellingham Mill*, and also a new water corn mill on the *River Waveney*;

that all compositions for tithes were at an end;

that the defendant was bound to give him notice of the time and place of setting out the tithe of hay;

that he had set out the tithe hay before it was raked together;

HALL
against
MACHET.

that he had set out his tithe milk, but had not brought it to the church porch, as he was bound by the custom of the parish to do ; that he had not paid him the tithe of calves ;

that the tithe of the mills was, by the custom of the parish, payable to the rector ;

that the 9s a-year paid by the owner of the new water corn-mill, was on account of the damage done to the glebe lands in making the river, on which the mill was built, navigable ;

that the defendant had refused to account for any of the tithes ;

was an immemorial custom, that all the owners of cows fed and depastured in the said parish, or the titheable places thereof, should bring the tithe of milk to the porch of the said parish-church to be taken by the rector of the said parish ; but that the defendant had refused to bring the tithe of such milk so produced to the porch of the said church, and had milked his cows out of the parish. The bill further charged, that he had also refused to make the plaintiff any satisfaction for the tithe of calves, except that he once tendered to him seven shillings as a satisfaction for such tithe ; but which he, the plaintiff, had refused to accept, it being much inferior in value to what was then due to him on account of such calves. The bill further charged, that although the defendant had at different times sent sums of money to the plaintiff on account of the tithe of agistment, yet that such sums were very small, and by no means equal to the value of such tithe, nor did he send any account of the cattle which had been agisted by him ; and that he, the plaintiff, had therefore refused to accept the monies so sent. The bill further charged, that in case the tithe of corn or grist mills was a personal tithe (which the plaintiff did not admit), yet that the occupiers of all corn mills situated within the said parish, and particularly of the said mills occupied by the said defendant, had immemorially paid tithe of their respective mills, or some composition for the same, and that such tithe or composition, during such time, had always been paid to the rector of the said parish, and not to the rector or vicar of any other parish ; and that the defendant had, for divers years prior to *Michaelmas* 1788, paid to the plaintiff different sums of money on account of the tithe of the said mills so occupied by him. The bill further charged, that the defendant *M. Kerrison* occupied a house in the parish ; that the servants employed about the mills occupied by him resided therein ; that he, the plaintiff, was well entitled to the tithe of the said house and mills ; that he never entered into any composition or agreement whatsoever with the defendant concerning the tithe of the said mills, nor had he, the defendant, ever paid him any sum of money for such tithe or any other account, except nine shillings a-year ; and that the said sum was paid him, as rector, by the defendant, as proprietor of *Bungay Staith*, in consideration of part of *the Glebe Lands* belonging to the rectory which had been cut away many years since when the course of *the River* upon which the said *Staith* was erected was altered ; and that the same was in no manner paid to him on account of the said mills, but on the account aforesaid, ever since the said land was cut away, and long before the said mills were erected. The bill further charged, that the said defendants respectively had refused to come to an account with the plaintiff for the tithes of the said titheable matters and things as aforesaid, or to make him any satisfaction for the same ; and that there were very considerable sums of money due to the plaintiff

plaintiff on account thereof. The bill therefore prayed; that *J. Machet* might account for the hay he had gathered in the year 1792 off the respective pieces of ground called *the Nine Acres* and *the Little Mead* or *the Two Acres*; for the hay he had gathered, from 1789 to 1792 respectively from off the piece of ground part of *Ellingham Meadow*; and for the tithes thereof; that he might also give an account of the number of colts and calves which, during the year 1789, and from thence to the time of filing the bill in *Trinity Term* 1793; for the number of milch cows which had been fed by him since the eighteenth of *October* 1791, and the tithe milk thereof; for the lops of pollard trees and other wood cut down, lopped, or grubbed on his farm during the said time; for the garden stuff, apples, pears, and other titheable matters, which he had in each year growing in the said parish; for the dry, barren, and unprofitable cattle, which he had in each year since *Michaelmas* 1689 fed and agisted upon his farm; for the kinds and quantities of grain ground in each year at the respective mills for the time aforesaid, and of the rate usually paid for grinding each respective kind of grain, and of the sum of money, or quantities of grain, and the value thereof, they had respectively received, or ought to have received, for grinding the same; for what was due from them respectively for the several titheable matters before-mentioned; and pay what should appear due on the taking of such account.

HALL
against
MACHET.
The bill prays an account of tithe hay made on *the Nine Acres*, on *the Little Mead*, and on *Ellingham Meadow*; of colts and calves from 1789 to 1793; of milch cows since the 18th of *October* 1791; of loppings and toppings of trees; of garden-stuff and fruits; and of agistment of barren cattle from *Michaelmas* 1789; of the profits of the mulcture of the said mills;

The defendant *J. Machet* admitted, that since *Michaelmas* 1788 he had been in possession of the farm and lands mentioned in the bill; that he had mowed and gathered on *Ellingham Meadow* all the hay that grew thereon, without setting out the tithe thereof; that no tithe in kind had ever been paid for or in respect of the said meadow; and he insisted, that there had been immemorially payable to the rector of *Ellingham* aforesaid two-pence an acre, as or by way of *modus*, in lieu and satisfaction of all tithes arising from the said meadow called *Ellingham Meadow*; that he had offered to pay the plaintiff the said *modus*; but that he had refused to accept of the same. He also admitted, that he had mowed and gathered from off *the Nine Acres* and *the Little Meadow* the hay growing thereon; and said, that he had given proper notice to the plaintiff to come and see the tithes thereof set out; and that he had duly set it out in cocks; but that the plaintiff did not attend. He also said, that he had not depastured on his farm more than eight cows; and he set forth all the titheable matters and things he had, and the values of the tithes thereof. He also admitted, that he occupied a certain ancient water corn mill, called *Ellingham Mill*, and no other; that considerable quantities of corn had been ground thereat; but he said, that he could not set forth how much; and he denied, that he had made any considerable profit thereof, the monies expended by him in the necessary repairs of the said mill having exceeded

The defendant says, that there is a *modus* of ad. an acre payable in lieu of all tithes arising on *Ellingham Meadow*;

that he gave the plaintiff notice of tithing the hay on *the Nine Acres* and *the Little Mead*, and that, on his neglecting to attend, he duly set out the tithes thereof;

that *Ellingham Mill* is an ancient mill, and that the repairs of it had exceeded its profits;

his

HALL
vs.
MARRAS.

that there is no
custom in the
parish to carry
the tithe milk
to the church-
porch;

that he had ten-
dered what was
due for tithes;

what the sum
paid on account
of the injury
done to the
glebe lands, in
rendering the
river navigable, is
only 5s. a year;

that the ex-
pences of erect-
ing and main-
taining the new
water corn-mill
have greatly ex-
ceeded the pro-
fits it has pro-
duced;

that the tithes of
such a mill is a
personal tithe, and
that neither he
nor his servants
reside in the pa-
rish where it
stands, except when it is worked.

his profits; and insisted, that the plaintiff was not entitled to the tithe of such *ancient mill*. He admitted, that on the sixteenth of September 1788 he had caused such notice to be delivered to the plaintiff as was stated in the bill; and denied, that he ever pretended any composition existed between them since *Michaelmas* 1788, excepting the said *modus*. He denied all knowledge of the customs to bring the tithe of milk to the porch of the parish-church, and for the occupier of the *Mills* to pay tithe to the rector; or that the occupiers thereof had in fact immemorially, or for any length of time, paid tithe for the mills, or any composition in lieu thereof. He set forth his titheable matters and things; the values thereof; what the plaintiff had accepted; what he had not accepted; and the several tenders he had made to the plaintiff for several of his tithes, which he refused.

The defendant *M. Kerrison* admitted, that the plaintiff was rector, and entitled to the tithes of the parish, or to some satisfaction or composition for the same; and stated the statute 22. Car. 2. intitled, "An Act for making navigable the Rivers *Brandon and Waveney*, which divides the Counties of *Norfolk* and *Suffolk* from *Beccles* to *Bungay*;" and laid, that the undertakers having cut away some part of the *Glebe Lands* belonging to the rectory of *Ellingham*, the commissioners, named in the said act for adjusting the differences that should arise by the making the river between *Beccles* and *Bungay* navigable, made an order, dated September the twenty-fifth 1673, that the undertakers should pay to the rector of *Ellingham*, in lieu of the *Glebe Lands* by them cut away or impaired, the sum of five shillings yearly and every year for ever. He then stated, that in 1784 he purchased the right to the navigation of the said river *Waveney*, with the staiths and locks thereon, two dwelling-houses, and the rates and tolls payable for the carriage of coals, corn, timber, and other goods, upon the said river, between the aforesaid towns, pursuant to the said act; that in the following year he erected a *water corn mill* on the river, in the parish of *Ellingham*, and worked the same in February 1786; that he had ground considerable quantities of wheat, but no other grain, except about three coombs of barley and mixed corn yearly thereat, and had received money for grinding some part thereof; that he had made profits of the other part; but that he had sustained a loss thereby, as the building of the said mill, and the men's wages, far exceeded the profits thereof; and he insisted, that no tithe was due or payable on account of the said mill, or any corn or grain ground thereat, and particularly that the tithe of such mill, if any such were due, was a *personal tithe* only, and that he was only bound of right to render the tenth part of the clear profits of the mill, after deducting all charges attending the same. He also said, that he lived in the parish of *Bungay*; that his servants also lived there, and not in the parish of

Ellingham,

Ellingham, except at the time of working *the Mill*; and submitted, that the plaintiff was not entitled to such relief against him as prayed by his bill; but he said, that, in case the plaintiff should establish his right to the said tithe, he was ready to account for the same.

HALL
against
MACHET.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and on hearing the cause and counsel on the eighteenth of *May* 1797; and reading, for the plaintiff, the answers of the defendant *Machet*; the depositions of several witnesses; and the deposition of *Isaac Roberts* to the sixth and eleventh interrogatories being offered to be read, and rejected; and on reading *Ellingham Tithe Book*; a decree, dated the thirtieth of *June* 1716, *Crispe v. Tibbalds (a)*; and upon reading, for the defendant *J. Machet*, the depositions of several witnesses; several receipts from the plaintiff; and hearing the reply; and upon full debate of the matter; the cause was ordered to stand over for the judgment of the Court; and on the twenty-seventh of *May* 1797, judgment was pronounced accordingly by THE LORD CHIEF BARON.

The cause
heard.

The judgment
of the Court
pronounced by
the Lord Chief
Baron.

THE COURT ordered, that so much of the bill as prayed an account of the tithes of hay gathered by *J. Machet* in the years 1789, 1790, 1791, and 1792, from *Ellingham Meadow*, the tithe of milk produced since the eighteenth of *October* 1791 by his cows that were fed and milked in *Mettingham* and in *Ellingham*, the tithe thereof that had been set out by him, the tithes of wood, garden-stuff, apples, and pears, taken by him from off his farm in *Ellingham*, and the tithes of grain ground at his mill, should be dismissed with costs.

The bill dismissed with costs as to the tithe hay of *Ellingham Meadow*, the tithe milk before set out, the tithe of wood, garden stuff, and fruits, and the tithe of *Ellingham Mill*.

THE COURT further ordered so much of the bill as sought an account of the tithes of hay gathered by *J. Machet* in 1792 from *the Nine Acres* and *the Little Meadow*, to be also dismissed, but without costs.

The bill dismissed without costs as to the hay of *the Nine Acres* and *the Little Mead*.

The plaintiff, with respect to the tithes of calves and colts produced by *Machet's* cows and mares in *Ellingham* in the said four years, waived the account, without costs on either side.

The plaintiff waives the account of the tithes of colts and calves.

THE COURT further ordered the deputy to take an account of what was due from *Machet* for the tithes of the milk of the cows depastured and milked in *Ellingham* since the eighteenth of *October* 1791, with costs.

The tithe milk since the 18th of *October* 1791 decreed with costs.

THE COURT also ordered an account for the tithe of agistment of *Machet's* dry, barren, and unprofitable cattle depastured in *Ellingham* from *Michaelmas* 1789.

The agistment tithe since *Michaelmas* 1789 decreed.

(a) See a cause printed in vol. 1. page 517.

HALL
against
MACHET.
The tenders to
be reported.

The deputy was also ordered to enquire, whether the tenders mentioned in *Machet's* answer for such tithe of agistment, except the tender of five guineas which was alledged to have been made on the fifteenth of *November 1793*, after the filing of the bill, was a sufficient compensation for the same.

An account of
the tithes of the
new water corn-
mill decreed, if
its profits shall
have exceeded
its expenditure
of rent, servants
wages, repairs,
and other out-
goings.

THE COURT further ordered the deputy to take an account of what, if any thing, was due from *M. Kerrison* for the tithe of the clear yearly gains or profits, if any, at his said mill; and in order to ascertain such clear yearly gains and profits, the deputy, in computing the same, was ordered to set a yearly value in the nature of a rent upon the said mill, and make an allowance for the same, and to ascertain and make a reasonable allowance for servants wages, repairs, and other expences and outgoings.

Costs reserved.

The costs not herein before directed, and all further directions, were ordered to be reserved until the coming in of the report.

THE COURT FULL.

TRIN. TERM,
37. GEO. 3.

BOULTER against THACKWELL; et c. Contra.

Worcestershire, 29th June 1797.

The lessee of the
impropriator of
the parish of
Berrow, in *Wor-
cestershire*, claims
the great and
small tithes of
the parish in
kind.

THE plaintiff, as lessee under a lease, dated the twenty-fifth of *November 1786*, from the dean and chapter of the cathedral church of *Christ and the Blessed Mary the Virgin of Worcester*, of the rectory of *the Berrow*, otherwise *the Nether Berrow*, in the county of *Worcester*, except the nomination of a chaplain or curate to the service of the church and the curacy thereof, claimed the great and small tithes of the parish, particularly the tithes of clover seed, carrots, potatoes, turnips, flax, hemp, hops, and other roots, seeds, apples, pears, agistment of oxen, bullocks, horses, cows, heifers, and other dry, barren, and unprofitable cattle, cows, mares, sheep, calves, colts, lambs, milk, wool, pigs, geese, ducks, turkies, hens, eggs, and other titheable matters and things; and, charging that all the lands on which the said matters were had were not exempt from the payment of small tithes in kind, or covered by any *modus* or legal composition in lieu thereof, prayed an account and payment of what should appear to be due thereon.

The defendants
set up *moduses* in
lieu of the tithes
of milk, calves,
colts, geese, pigs,
cyder, perry,
lambs, and the
repasturing of
sheep, arising on
two farms called
Rye Court and *Berrow Court* and the rest of the lands in the parish;

The defendants admitted, that they occupied considerable estates, called *Rye Court* and *Berrow Court*, within the parish; and that they had had the several titheable matters before-mentioned thereon; but they denied, that the plaintiff was entitled to receive tithes in kind of milk, calves, colts, geese, pigs, cyder, perry, lambs, or pasturage of sheep, upon or from the estates so occupied by them; but that the several occupiers of those two estates, and also the owners and occupiers of all other

estates

estates in the parish, had immemorially paid, and ought to pay, to the owner of the rectory, yearly, on *Michaelmas Day* old stile, or as soon afterwards as demanded, as *modus* in lieu of the several species of tithes following arising from the said estates, *viz.* one penny for the milk or white of a cow; sixpence for a calf; one shilling for a colt; eightpence for a goose; one penny for an hoghead of cyder; one penny for an hoghead of perry; twopence for a lamb; one penny for the depasturage of a sheep; and one shilling for a farrow of pigs; and insisted, that they, and all those whose estates they had in the premises occupied by them, had claimed to have, and had actually had, the benefit of such *modus*; that they had always been ready and willing, and had frequently offered to pay or account with the plaintiff not only for such tithes as were unprotected by such *modus*, but also for the said *modus* themselves; and they severally craved the benefit of their tenders, and also of the said *modus*, as fully and effectually as if they had pleaded the same respectively.

Boulter
against
Thackwell
et c. *Contra.*

The defendants *J. Thackwell* and *J. Jackman*, as well on the behalf of themselves as other the owners and occupiers of lands, tenements, and hereditaments, in the parish, filed their *cross bill* against *Boulter* and the dean and chapter of *Worcester*, stating the lease, the *modus*, and the other matters, as in their answer to the original bill; and prayed, that all the *modus* before specified might be for ever established.

and they file a
cross bill to estab-
lish the said
modus

W. Boulter admitted the lease; and that he had ever since accepted and taken of and from the plaintiffs all the great tithes arising on the premises in their occupation, or some composition in lieu thereof; but denied, that any of the aforesaid *modus* ever existed; and said, that if any such payments had been made, they were mere *temporary compositions*, variable at pleasure, and not valid prescriptive *modus* for any particular tithes; and that if the same had been accepted, they had been accepted through some mistake; and that such acceptance ought not to prejudice his interest, or prevent his recovering or receiving such tithes in kind, or a full compensation for them.

The justice de-
nies the exist-
ence of the *mo-
dus*; and insists
on tithes in
kind.

The dean and chapter of *Worcester* admitted that they were owners of the rectory and tithes; that they had granted such lease to *Boulter*; that *Boulter* claimed to be entitled to all manner of tithes in kind, both great and small, arising therein, without any regard to the *modus* suggested as aforesaid; but whether such *modus* did exist they said that they could not tell.

The impropri-
ator admits that
he made a lease
to the plaintiff.

The plaintiffs in both causes replied; the defendants rejoined (except the dean and chapter of *Worcester*); and both causes came to issue; and divers witnesses were examined in the *cross cause* on both sides; and upon hearing counsel for all parties

The cause
heard.

Boulter
against
Trachwell;
et c. *Contra*.

The bill dismissed as to the tithes of clover seed, carrots, potatoes, hemp, flax, &c.

The tithe of turnips, agistment of barren cattle, wool, and poultry, decreed.

Issues directed to try, whether

rd. is payable every Michaelmas in lieu of the tithes of a milch cow.

6d. in lieu of the tithes of a calf.

in both causes; and reading the several answers; the depositions of several witnesses; several receipts for *privy tithes* for the years 1740, &c.; and on full debate of the matter;

THE COURT ordered *the original bill*, so far as it sought an account for the tithes of clover seed, carrots, potatoes, flax, hemp, hops, and other herbs, roots, and seeds, except turnips and fruits, exclusive of apples and pears, to be dismissed with costs; and an account to be taken of what was due to *Boulter* for the tithes of turnips, agistment of dry, barren, and unprofitable cattle, except sheep, and for the tithes of wool, goslings, ducklings, chickens, and eggs, with costs; so far as the same respected the account.

THE COURT further ordered a trial at law upon the following issues, *viz.*

FIRST, "Whether, from time whereof the memory of man is not to the contrary, the several owners and occupiers of the several estates in the pleadings mentioned, called or known by the respective names of *Rye Court* and *the Berrow Court*, within the rectory and parish of *Berrow*, otherwise *the Nether Berrow*, in the county of *Worcester*, and the titheable places thereof, and also the owners and occupiers of all other estates within the said rectory and parish respectively, have paid, and have used and been accustomed to pay, and still of right ought to pay, to the several and respective owners and proprietors of the rectory and parsonage for the time being, their farmers and lessees, yearly, on the feast of *Saint Michael the Archangel* before the alteration of the stile of the year, or as soon after as demanded, the sum of one penny for every milch cow kept, fed, and depastured, on the said two estates called *Rye Court* and *the Berrow Court*, and all other estates within the said rectory and parish, as a *modus* for or in lieu of the tithe of the milk or white of such cow."

SECONDLY, "Whether, from time whereof the memory of man is not to the contrary, the several owners and occupiers of the several estates in the pleadings mentioned, called or known by the respective names of *Rye Court* and *the Berrow Court*, within the rectory and parish of *Berrow*, otherwise *the Nether Berrow*, in the county of *Worcester*, and the titheable places thereof, and also the owners and occupiers of all other the estates within the said rectory and parish respectively, have paid, and have used and been accustomed to pay, and still of right ought to pay, to the several and respective owners and proprietors of the said rectory and parsonage for the time being, their farmers and lessees, yearly, on the feast of *Saint Michael the Archangel* before the alteration of the stile of the year, or as soon after as demanded, the sum of sixpence for every calf dropped on the said two estates called

“ *Rye Court and the Berrow Court*, and on all other estates
 “ within the said rectory and parish, as a *modus* for and in lieu
 “ of the tithe of such calf.”

DOULTER
 against
 THACKWELL;
 et al. contra.

THIRDLY, “ Whether, from time whereof the memory of
 “ man is not to the contrary, the several owners and occupiers
 “ of the several estates in the pleadings mentioned, called or
 “ known by the respective names of *Rye Court and the Berrow*
 “ *Court*, within the rectory and parish of *Berrow*, otherwise
 “ *the Nether Berrow*, in the county of *Worcester*, and the tithe-
 “ able places thereof, and also the owners and occupiers of all
 “ other the estates within the said rectory and parish respectively,
 “ have paid, and have used and been accustomed to pay, and
 “ still of right ought to pay, to the several and respective owners
 “ and proprietors of the said rectory and parsonage for the time
 “ being, their farmers and lessees, yearly, on the feast of *Saint*
 “ *Michael the Archangel* before the alteration of the stile of the
 “ year, or as soon after as demanded, the sum of one shilling
 “ for every colt fallen, on the said two estates called *Rye Court*
 “ and *the Berrow Court*, and on all other estates within the said
 “ rectory and parish, as a *modus* for and in lieu of the tithe of
 “ such colt.”

Id. in lieu of the
 tithe of a colt.

FOURTHLY, “ Whether, from the time whereof the memory
 “ of man is not to the contrary, the several owners and occu-
 “ piers of the several estates in the pleadings mentioned, called
 “ or known by the respective names of *Rye Court and the Berrow*
 “ *Court*, within the rectory and parish of *Berrow*, otherwise *the*
 “ *Nether Berrow*, in the county of *Worcester*, and the titheable
 “ places thereof, and also the owners and occupiers of all other
 “ estates within the said rectory and parish respectively, have
 “ paid, and have used and been accustomed to pay, and still of
 “ right ought to pay, to the several and respective owners and
 “ proprietors of the said rectory and parsonage for the time
 “ being, their farmers and lessees, yearly, on the feast of *Saint*
 “ *Michael the Archangel* before the alteration of the stile of the
 “ year, or as soon after as demanded, the sum of one penny for
 “ every hoghead of cyder made on the said two estates called
 “ *Rye Court and the Berrow Court*, and on all other estates within
 “ the said rectory and parish, as a *modus* for and in lieu of the
 “ tithe of such cyder.”

Id. in lieu of the
 tithe of a hog-
 head of cyder.

FIFTHLY, “ Whether, from time whereof the memory of
 “ man is not to the contrary, the several owners and occupiers
 “ of the several estates in the pleadings mentioned, called or
 “ known by the respective names of *Rye Court and the Berrow*
 “ *Court*, within the rectory and parish of *Berrow*, otherwise *the*
 “ *Nether Berrow*, in the county of *Worcester*, and the titheable
 “ places thereof, and also the owners and occupiers of all other
 “ estates within the said rectory and parish respectively, have

Id. in lieu of the
 tithe of a hog-
 head of perry.

Boulter
 against
Thackwell;
 et c. Contr.

“ paid, and have used and been accustomed to pay, and still of
 “ right ought to pay, to the several and respective owners and
 “ proprietors of the said rectory and parsonage for the time
 “ being, their farmers or lessees, yearly, on the feast of *Saint*
 “ *Michael the Archangel* before the alteration of the stile of the
 “ year, or as soon after as demanded, the sum of one penny for
 “ every hoghead of perry made on the said two estates called
 “ *Rye Court* and *the Berrow Court*, and on all other estates
 “ within the said rectory and parish, as a *modus* for and in lieu
 “ of the tithe of such perry.”

3d. in lieu of the
 tithe of a lamb.

SIXTHLY, “ Whether, from time whereof the memory of
 “ man is not to the contrary, the several owners and occupiers
 “ of the several estates in the pleadings mentioned, called or
 “ known by the respective names of *Rye Court* and *the Berrow*
 “ *Court*, within the rectory and parish of *Berrow*, otherwise *the*
 “ *Nether Berrow*, in the county of *Worcester*, and the titheable
 “ places thereof, and also the owners and occupiers of all other
 “ estates within the said rectory and parish respectively, have
 “ paid, and have used and been accustomed to pay, and still of
 “ right ought to pay, to the several and respective owners and
 “ proprietors of the said rectory and parsonage for the time
 “ being, their farmers or lessees, yearly, on the feast of *Saint*
 “ *Michael the Archangel* before the alteration of the stile of the
 “ year, or as soon after as demanded, the sum of twopence for
 “ every lamb dropped, yeaned, or fallen on the said two estates
 “ called *Rye Court* and *the Berrow Court*, and on all other estates
 “ within the said rectory and parish, as a *modus* for and in lieu
 “ of the tithe of such lamb.”

3d. in lieu of the
 tithe of depas-
 turing of sheep.

SEVENTHLY, “ Whether, from time whereof the memory of
 “ man is not to the contrary, the several owners and occupiers
 “ of the several estates in the pleadings mentioned, called or
 “ known by the respective names of *Rye Court* and *the Berrow*
 “ *Court*, within the rectory and parish of *Berrow*, otherwise *the*
 “ *Nether Berrow*, in the county of *Worcester*, and the titheable
 “ places thereof, and also the owners and occupiers of all other
 “ estates within the said rectory and parish respectively, have
 “ paid, and have used and been accustomed to pay, and still of
 “ right ought to pay, to the several and respective owners and
 “ proprietors of the said rectory and parsonage for the time
 “ being, their farmers or lessees, yearly, on the feast of *Saint*
 “ *Michael the Archangel* before the alteration of the stile of the
 “ year, or as soon after as demanded, the sum of one penny for
 “ each sheep fed and depastured on the said two estates called
 “ *Rye Court* and *the Berrow Court*, and on all other estates within
 “ the said rectory and parish, as a *modus* for and in lieu of the
 “ tithe of the depasturage of such sheep.”

3d. in lieu of the
 tithes of a far-
 row of pigs.

EIGHTHLY, “ Whether, from time whereof the memory of
 “ man is not to the contrary, the several owners and occupiers
 “ of

“ of the several estates in the pleadings mentioned, called or
 “ known by the respective names of *Rye Court* and *the Berrow*
 “ *Court*, within the rectory and parish of *Berrow*, otherwise *the*
 “ *Nether Berrow*, in the county of *Worcester*, and the titheable
 “ places thereof, and also the owners and occupiers of all other
 “ estates within the said rectory and parish respectively, have
 “ paid, and have used and been accustomed to pay, and still of
 “ right ought to pay, to the several and respective owners
 “ and proprietors of the said rectory and parsonage for the time
 “ being, their farmers or lessees, yearly, at the feast of *Saint*
 “ *Michael the Archangel* before the alteration of the stile of the
 “ year, or as soon after as demanded, the sum of one shilling for
 “ every farrow of pigs farrowed on the said two estates called
 “ *Rye Court* and *the Berrow Court*, and on all other estates within
 “ the said rectory and parish, as a *modus* for and in lieu of the
 “ tithe of such farrow pigs.”

BOULTER
 against
 THACKWELL;
 et al. contra.

The defendants in the original cause to be plaintiffs at law; the Judge to be at liberty to indorse any thing special; and the consideration of costs in respect of the said issues, and subsequent costs in respect to the accounts directed, and all further directions, to be reserved. The defendants in equity to be plaintiffs at law.

On the eleventh of *May* 1798, the said issues were ordered to be taken as confessed by the said *William Boulter*; and on the fourteenth of *May* 1798, the cause standing in the paper of causes for further directions, counsel were heard for all parties; and on reading the decree and order of the eleventh of *May* for taking the said issues *pro confesso*; The issues ordered to be taken as confessed.

THE COURT ordered the said *moduses* to be established without costs as between *John Thackwell*, *Thomas Jackman*, and *William Boulter*, parties to the said issues; and the deputy to tax the costs of the dean and chapter of *Worcester*, to be paid by *John Thackwell* and *Thomas Jackman*, who are to receive the same again from *William Boulter*. The *moduses* established, with costs.

A. MACDONALD.
 B. HOTHAM.
 R. PERRY.
 A. THOMSON.

CHAPMAN against BEARD.

Somersetshire, 18th July 1797.

TRIN. TERM,
 37. GEO. 3.

THE bill stated, that the plaintiff was, in *October* 1778, duly presented, instituted, and inducted, into the vicarage of *Benwell*, in the county of *Somerset*; that, as vicar thereof, he was, by some ancient endowment, prescription, usage, or otherwise, entitled to the small tithes, particularly the tithe of milk, yearly. The vicar of *Benwell*, in *Somersetshire*, demands the small tithes in kind. S. C. Anst. Rep. 942.

CHAPMAN
against
BEARD.

yearly arising in the parish ; that the defendant had ever since occupied a farm therein, and had kept divers milch cows, which had produced milk thereon, but that he had refused to pay the tithes thereof, under a pretence that the said cows had been wholly fed on hay and after-pasture, and that no tithes were payable for the milk of cows so fed ; but the bill charged, that they had been fed on grass lands that had not been mowed that year, as well as on hay and on after-pasture ; and prayed an account of the tithes of the said milk, and payment of what should appear due on such account.

The defendant says, that the plaintiff had not read the thirty-nine articles, as prescribed by the 13. Eliz. c. 12. and that therefore he was not entitled to the tithes ;

but that if he was, the tithes of milk were covered by a *modus* of 2d. an acre that was payable to the rector in lieu of tithe hay.

The defendant said, that the plaintiff had not been duly presented, instituted, and inducted into the said vicarage ; that he, the defendant, had been a resident in the parish ever since the plaintiff had taken upon him the character of vicar ; that he had not publicly read in the said parish-church the *articles of religion* mentioned and prescribed by the statute of the 13. Eliz. c. 12. nor had in any manner delivered his assent to such articles, nor taken the oath of allegiance or supremacy in any of his majesty's courts of record at *Westminster*, or elsewhere in *England* ; and that, for want of such induction, and reading such *articles of religion*, and taking the oaths as before-mentioned, he had not been, nor was in any manner entitled to receive the small tithes belonging to the vicarage. The defendant admitted, that, ever since the plaintiff's pretended induction, he had occupied a farm in the parish ; that he had depastured thereon many milch cows ; and that he had, for the reasons aforesaid, refused to pay the plaintiff the tithes of the milk thereof ; the quantity of which, and the number of cows by which it had been produced, he set forth. He also insisted, that there was in the parish a *modus* of twopence an acre payable to the rector in lieu of tithe hay ; and that he was thereby exempted from paying the tithes of milk ; but he submitted to account, in case the plaintiff should prove his right to the said tithes.

The cause heard.

The plaintiff replied ; the defendant rejoined ; and divers witnesses were examined ; and now upon hearing counsel on both sides, and reading, on behalf of the plaintiff, the full evidence, to wit, the institution of the plaintiff, dated the fifth of *October* 1778 ; the depositions of several witnesses ; and a notice from the defendant to the plaintiff, dated the twenty-sixth of *September* 1792 ; and also reading several depositions of witnesses taken in the cause on the behalf of the said defendant ; and on full debate ;

The tithes demanded by the bill decreed with costs.

THE COURT ordered the deputy to take an account of the tithe milk demanded by the bill, with costs.

HARDW

Hadow *against* MARSHALL.MICH. TERM,
28. GEO. 3.

Bedfordshire, 27th November 1797.

THE vicar of *Stretley*, in the county of *Bedford*, claimed the small tithes arising in the parish, except of such as arose upon *Sharpenhoe Bury Farm*; and stated, that the defendant was seised in fee simple of the rectory; that he was in possession of the tithes arising therein, except such as he, the plaintiff, claimed, and except the tithes of the township of *Sharpenhoe*; that he occupied lands in the parish not within the township of *Sharpenhoe* or part of *Sharpenhoe Bury Farm*, particularly certain lands called *the Upper Farm* and *the Lower Farm*; that he had agisted barren and unprofitable cattle, as well as cows which had milk and calves, and sheep which had lambs and wool, thereon, and had refused to pay the tithes thereof. The bill then charged, that the plaintiff and his predecessors were entitled to the small tithes in such part of the parish as before mentioned; that they had always received the same, or some composition in lieu thereof, and particularly prior to *Michaelmas* 1793; that a pension of four pounds, thirteen shillings, and fourpence was due to the vicar out of the said rectory by some ancient endowment, usage, custom, or prescription, as well as such small tithes as aforesaid, as appeared by ancient deeds and writings in the defendant's custody; that the rectory had always been granted and conveyed subject to such pension; that the said pension had never been paid or accepted in lieu of any tithes; but that, on the contrary, the small tithes arising on the lands then occupied by the defendant, and on the other lands in the parish, except on *Sharpenhoe Bury Farm*, had been paid to the plaintiff and his predecessors. The bill also charged, that the lands so occupied by the defendant were not *glebe lands* belonging to the rectory, nor in any manner appendant thereto. The bill therefore prayed an account of the tithes of the agistment of barren and unprofitable cattle, calves, lambs, wool, milk, and all other small tithes since *Michaelmas* 1793.

The vicar of *Stretley*, in *Bedfordshire*, is entitled to the small tithes of the lands called *the Upper Farm* and *the Lower Farm* in kind, although the said lands are in the actual occupation of the rector of the parish. The vicar is also entitled to a yearly pension of 4*l.* 13*s.* 4*d.* from the rector.

The defendant admitted, that he occupied *the Upper Farm* and *the Lower Farm*, and that he had the titheable matters thereon, as stated in the bill; but he insisted, that the said farms, or a considerable part thereof, were appurtenant to and part of the rectory, and that therefore he ought not to pay tithes so long as the same continued in his own hands and occupation; that the plaintiff's predecessors had not received any part of the small tithes thereof; that a pension of four pounds, thirteen shillings, and fourpence, was payable to the plaintiff, as vicar of *Stretley*, out of the rectory, in full satisfaction of all tithes whatsoever; that the said rectory had always been granted and conveyed subject thereto. He then set forth, that by letters patent, dated the

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against
MARSHALL.

the twenty-fourth of *September*, in the thirty-sixth year of *Henry the Eighth*, the said king granted, among other things, “ all that
“ the rectory and church of *Stretley*, otherwise *Streteley*, with the
“ appurtenances, in the county of *Bedford*, to the late monastery
“ or priory of *Markyates*, in the said county, formerly belonging
“ and appertaining, and being parcel of the possessions or revenues of the said monastery, and all the premises and lands,
“ woods, glebes, tithes, as well great as small, obventions, fruits,
“ profits, commodities, and emoluments whatsoever, with the
“ appurtenances, to the said rectory and church belonging, or in
“ anywise appertaining, and also the advowson, donation, presentation, free disposition, and right of patronage of the vicarage of *Stretley*, otherwise *Streteley*, to *T. Norton* and his heirs for ever, subject to the payment of four pounds, thirteen shillings, and fourpence, to the vicar thereof, and his successors for the time being ;” that by virtue of several mesne conveyances, and particularly of certain indentures of lease and release, dated the tenth and eleventh of *February* 1790, and made between *W. Mainwaring* and the defendant, for the consideration therein mentioned, the said rectory impropriate, premises, farms, lands, and tithes, were granted and conveyed to the defendant ; that both *the Upper Farm* and *the Lower Farm* were included therein ; and that the said rectory, lands, and premises, were now in his possession and occupation under and from the said grant and conveyance aforesaid ; that he was the owner and occupier thereof, and seised in fee simple of the inheritance thereof ; that all, or a considerable part of the land occupied by him, were *glebe lands* belonging to the rectory, they being appendant and appurtenant thereto ; but he admitted, that some part of the said lands belonging to his farms had been the property of some other persons than those through whom he now derived his title to the rectory. He further said, that he claimed the rectory, farm, and lands thereto belonging under *William Goldsmith* ; that he, some time after the said lands and premises came to him, purchased the tithes thereof from the rectory ; that he never entered into any composition whatsoever with the plaintiff for the tithes thereof, nor did he believe that the said lands, or any part thereof, had ever paid any tithes whatsoever to the plaintiff or his predecessors vicars of the said parish, either during the occupation of the rector himself, or his lessees, or that any composition for small tithes was ever paid by the owners or occupiers of such farms and lands in lieu thereof ; and he submitted, that he was not bound to come to any account for such small tithes, or to make the plaintiff any satisfaction for the same, except the said annual stipend of four pounds, thirteen shillings, and fourpence.

The plaintiff replied ; the defendant rejoined ; and divers witnesses were examined on both sides ; and upon hearing counsel ;

counsel ; and reading the depositions of several witnesses taken in the cause on both sides ; and an extract from the ecclesiastical survey in THE FIRST FRUITS OFFICE, taken in pursuance of 26. Hen. 8. so far as related to the vicarage of *Stretley* ; a decree of the court of augmentation of the revenues of the crown, in the custody of the king's remembrancer, dated *Easter Term*, in the thirty-fourth year of *Henry the Eighth* ; and hearing the reply ; and on full debate of the matter ;

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against
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THE COURT ordered the deputy to take an account of all the small tithes which had arisen on the lands and premises occupied by the defendant, in the pleadings mentioned, since *Michaelmas* 1793 ; but the plaintiff offering to waive the account, upon the defendant paying fifty pounds for the small tithes up to *Michaelmas* last past, exclusive of the pension of four pounds, thirteen shillings, and fourpence, and the defendant agreeing thereto, the said sum of fifty pounds for his tithes and the costs of suit were ordered to be paid by the defendant accordingly.

THE COURT FULL.

HATCH against GORING.

Sussex, 24th November 1797.

MICH. TERM,
38. GEO. 3.

THE plaintiff, as the vicar of the parish of *Washington*, in the county of *Sussex*, claimed all the tithes of the parish, excepting of corn and hay, and as the lessee of the rectory under *Saint Mary Magdalen College*, in *Oxford*, the tithes of corn and hay ; and stated, that the defendant, previous to *Michaelmas* 1789, occupied farms and lands in *Washington*, in which his dwelling-house was situate, and also other farms and lands in the parish of *Findon*, adjoining thereto ; that he had paid to the rector of *Findon* ever since a certain composition in lieu of all tithes payable by him to the rector there ; that previous to that time, he had paid to the plaintiff, as vicar, and as lessee of the impropriate rectory of *Washington*, a certain composition in lieu of all the tithes payable by him within the said parish ; that he had given a proper notice to determine the same at *Michaelmas* 1789 ; that the same was accordingly determined at that time ; that before, or shortly after such notice was given, the defendant laid down the whole, or the greater part of his lands in the said parish with grass ; that he had ever since used the same as grass land ; that in every year since *Michaelmas* 1789 he had kept, fed, and depastured thereon, ewes and other sheep, which yielded wool and lambs ; that he had also agisted barren and unprofitable cattle thereon, and also horses, bullocks, and other cattle, which were used by him for the plough or for draught upon his lands in the parish of *Findon* ; that the said ewes and other sheep

The vicar of *Washington*, in *Sussex*, is entitled to the tithes of wool and lambs of sheep and ewes that are fraudulently removed into the adjoining parish of *Findon* for the purpose of being shorn and lambing there, in order to deprive the vicar of the said tithe : and *quære*, if there is not a custom in the parish to pay twenty-four eggs every *Saturday* called *Egg Saturday*, in lieu of all the tithes of poultry.

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against
- GORING.

sheep had been taken out of the parish of *Washington* into the parish of *Findon* for the purpose of lambing and being shorn out of the parish of *Washington*, with a view to defraud the plaintiff of his tithes of the lambs and the wool of such ewes and other sheep; that the said horses, bullocks, and other cattle, were not used by the defendant for the plough or for draught in any of such years upon his lands in the parish of *Washington*; and that such horses, bullocks, or other cattle, or any of them, did not, in any of such years, yield any profit to the plaintiff; and as evidence thereof, he charged, that the whole, or much the greater part of the said defendant's lands in *Washington* had, in each year, since *Michaelmas* 1789, been laid down with grass, and that the whole or much greater part of his lands in the parish of *Findon* was arable land. He also said, that such ewes, sheep, horses, bullocks, and other cattle, had been kept, agisted, and depastured, altogether or principally, upon his lands in *Washington*; that such draught horses, bullocks, or other cattle, had been used wholly or principally upon his lands in *Findon*; and that he had only since *Michaelmas* 1789 some very small quantity only of arable land in *Washington*. The bill therefore prayed an account.

The defendant admitted, that he occupied lands in *Washington*; that his dwelling-house was situated in that parish; that he also occupied certain lands in the adjoining parish of *Findon*; and that the composition was determined at *Michaelmas* 1789; and he stated, that the lands occupied by him in *Washington* consisted of three hundred and forty acres; that one hundred and seventy-five acres thereof was down, and produced very little grass; that about fifty acres was in grass land, and used as such; that forty-four acres, and no more, had been laid down in grass since *Michaelmas* 1789; that the sheep which had been kept and depastured by him in *Washington* since *Michaelmas* 1789, had not, nor had any of them, lambed or been shorn, in any of the years since that time, within the said parish, but that all such sheep were shorn, and all the ewes belonging to him had lambed upon his lands in the parish of *Findon*; and therefore he insisted, that no tithes in respect of such wool and lambs did become due or payable to the vicar of *Washington*. He denied, that the ewes and other sheep were taken into *Findon* to lamb or to be shorn with a view to defraud the plaintiff of his tithes, for that it was the uniform practice, for a considerable time previous to *Michaelmas* 1789, for the defendant's ewes to lamb in the parish of *Findon*, such parish being more sheltered, and in every respect a better place for the purpose of lambing, and also for shearing, than the parish of *Washington*; and that his ewes had been usually kept and fed, for the space of six weeks, in each of the years since 1789, in the parish of *Findon*, for the purpose of lambing. He admitted, that he had not paid to the rector of *Findon* any tithes in

in kind for any of the lambs or wool of his ewes and sheep depastured by him upon his lands in *Washington* since the said time, he having paid the rector of *Findon* annually a certain sum of money as a composition in lieu of all tithes arising upon his lands in the parish of *Findon*; and he said, that the said rector was entitled to the tithes for the wool and lambs produced in that parish from all the defendant's sheep which might have been previously in the same year depastured in the parish of *Washington*; that the lands occupied by him in the said respective parishes, and used for pasturage, had, for many years, been open the one to the other, without being fenced off or separated, and consequently it had been and was customary for his sheep and cattle to graze and feed upon such respective lands indiscriminately, without any restraint. He admitted, that he did insist, for the reasons before mentioned, that the plaintiff was not entitled to be paid any thing whatsoever in respect of any other of the titheable matters claimed by his bill; and he set forth his farm and the lands he occupied in the parish of *Findon*; and said, that it was judged by the manager of his farming business, that the parish of *Findon* was the most proper place for the ewes to lamb in, and for the shearing of his sheep, and best for his stock, and for his own convenience and satisfaction: and he set up a *modus* of twenty-four eggs payable every *Saturday*, commonly called *Egg Saturday*, in lieu of the tithes of poultry and eggs annually produced on his said farm; and insisted, that the plaintiff had received the said *modus* up to and since *Michaelmas* 1789.

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against
Gerrard.

The plaintiff replied; the defendant rejoined; and the cause being at issue, divers witnesses were examined on both sides; and their depositions being duly published; and upon hearing the cause and counsel; and reading the answers; and the several depositions taken in the cause on both sides;

THE COURT ordered a trial at law upon the following issues, viz.

FIRST, "Whether the sheep of the defendant which, during the years 1790, 1791, 1792, and 1793, or any of them, were fed and depastured in the parish of *Washington*, but were shorn in the parish of *Findon*, were removed, for the purpose of shearing, into the said parish of *Findon*, in order to defraud the plaintiff of his tithe of wool."

SECONDLY, "Whether the ewes of the defendant which, during the years 1790, 1791, 1792, and 1793, or any of them, were fed and depastured in the parish of *Washington*, but were lambled in the parish of *Findon*, were removed for the purpose of lambing into the said parish of *Findon*, in order to defraud the plaintiff of his tithe of lambs."

The

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The plaintiff in equity to be plaintiff at law, and the judge at liberty to indorse; with the usual directions, &c.

The issues were accordingly tried by a special jury; and it was found on the first issue, that the sheep, and on the second issue, that the ewes, were removed, as alledged in the issues, for the purpose of defrauding the plaintiff of his tithe wool, and of his tithe of lambs.

THE COURT therefore, on the twenty-second of *November* 1798, ordered THE POSTEA to be confirmed, and the deputy to take an account of the tithes, as prayed by the bill, with costs, both at law and in equity.

MARKHAM, D. D. against HUXLEY.

Cheshire, 26th January 1798.

The rector of *Tattenhall*, in *Cheshire*, is only entitled to 1d. a-year in lieu of tithe poultry; 1d. a-year in lieu of tithe garden stuff; 1d. a-year in lieu of tithe honey; 1s. for each day's math of *Water Meadow*; and 6d. each day's math of *Upland*, in lieu of the tithe hay of the said lands; each day's math consisting of 20 roods, and each rood of 64 square yards.

THE rector of *Tattenhall*, in the county of *Cheshire*, claimed the great and small tithes arising in the parish, except such as were specified in his bill; and in particular he claimed the tithes of the hay, pigeons, ducks, chickens, poultry, orchard fruit, garden fruit, garden stuff, honey, agistment of dry, barren, and unprofitable cattle, and *Easter* offerings for persons above the age of fifteen years, who had received or ought to have received the holy communion in the said parish church, which had arisen on the lands of the defendant. The bill charged, that the lands in the parish had not been cultivated so as to produce hay until of late years, and within the time of legal memory, and that in fact no hay had been gathered therein until some time within memory. The bill also charged, that the terms *Cow Meadowing*, or *Water Meadowing*, and *Butland*, or *Upland Grounds*, had not been constantly and from time immemorial applied to the same particular grounds, and that there had been no lands or grounds in the parish which had been constantly and from time immemorial called, known, or particularly distinguished by the respective names of *Cow Meadowing*, or *Water Meadowing*, or *Butland*, or *Upland Grounds*, but that such description had sometimes varied and been applied to the same lands according to circumstances, with respect to the actual situation of such lands, and with reference to their being flooded or not flooded in the season of that year. The bill further charged, that a day's math did not mean or comprehend any specific or definite quantity of land or ground in the parish, but varied, or was subject to variation or change in different parts thereof, according to the nature or quality of the land or the quantity of the produce thereof, or from other circumstances. The bill therefore prayed an account of the tithes (except of corn and grain) which had arisen respectively from the farms in the defendant's occupation from the year 1782,

1782, and also of *Easter* offerings ; and payment of what should appear due thereon.

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The defendant insisted, that the plaintiff was not entitled to the tithe in kind of hay, for that from time whereof the memory of man runned not to the contrary, there had been payable and paid, and of right still ought to be paid to the rector thereof for the time being, by the inhabitants of the said parish occupying certain meadowing commonly called and described in the said parish, as *Cow* or *Water Meadowing*, one shilling for each day's math thereof, and so in proportion for any less or greater quantity than a day's math, as a *modus* or customary payment in lieu of the tithe in kind of hay yearly arising and gotten upon and from such *Cow* or *Water Meadowing* ; AND ALSO, that there had been payable and paid, and of right still ought to be paid to the rector of the said parish for the time being, by the inhabitants of the parish occupying *Butland* or *Upland Grounds* in the same parish sixpence for each day's math, as a *modus* or customary payment in lieu of the tithe in kind of hay yearly arising and gotten upon and from such *Butland* or *Upland Grounds* ; that the said *moduses* had been constantly paid at the feast of *Easter* in every year, and accepted as such by the rector for the time being of the parish until the plaintiff refused to accept the same ; that the *day's math* consisted, according to the usage and custom of the parish, of eighty roods, each rood containing sixty-four square yards. He also insisted, that within the said parish there had been also immemorially payable and paid to and accepted by the successive rectors thereof, and still of right ought to be paid to the rector for the time being, certain other *moduses* or customary payments at the feast of *Easter* annually, in lieu of the tithes in kind following, viz. the sum of one penny, commonly called *Hen Penny*, in lieu of the tithes in kind of all eggs, hens, and ducks belonging to any inhabitant of the parish ; ALSO ANOTHER sum of one penny, commonly called *Garden Penny*, in lieu of the tithes in kind of all fruit, garden stuff, and other titheable matters arising from ancient gardens and orchards by each and every occupier thereof ; ALSO ANOTHER sum of one penny, commonly called *Bee Penny*, in lieu of the tithe in kind of all honey had and gathered in the said parish by each and every owner of bees inhabiting therein ; that the same had, in each and every year since the said plaintiff's induction, been by said defendant duly paid to and accepted by him or his agent for his use, in lieu of the tithes in kind of the several titheable matters aforesaid up to the feast of *Easter* 1792 inclusive, and that he had also accounted for all his other titheable matters and things up to the said time, and for his *Easter offerings* twopence a head, according to immemorial usage : and he set forth the lands he held under *John Crewe, Esquire*, as tenant, and the quantity
and

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and quality of the titheable matters he had thereon; but he admitted, that the plaintiff was entitled to agistment tithes. He further said, that after the feast of *Easter* 1792, and before and after the plaintiff exhibited his bill, he rendered to him all the said *modus*es or customary payments, and which tenders were set forth in a schedule to his answer, but that the plaintiff had refused to accept thereof.

The other defendants, as tenants to *John Crewe*, put in the like answers, and insisted on the said *modus*es.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and their depositions being duly published; the cause heard; and the following evidence received, *viz.* the answers of the defendants; the depositions of the witnesses; and a terrier belonging to the parish of *Tattenhall*, dated the twenty-eighth of *July* 1770; and the matter fully debated;

THE COURT ordered the bill to be dismissed, with costs.

EASTER TERM,
38. GEO. 3.

THE DEAN OF WINDSOR against ROBINSON.

Middlesex, 30th April 1798.

The dean and canons of *Saint George's Chapel* in *Windsor* are improprators of the parish of *Isleworth* in *Middlesex*, and, as such, are entitled to the great tithes arising in the *Manor of Wyck* in the said parish in kind.

THE bill stated, that the plaintiffs, the dean and canons of his majesty's free chapel of *Saint George*, within his CASTLE OF WINDSOR, were seised of all and all manner of great tithes arising in the parish of *Isleworth*, in the county of *Middlesex*, and in the titheable places thereof in kind; that they or the plaintiff *J. Godin*, as their lessee, had ever since the twentieth of *September* 1790, been entitled to receive all the said tithes for their or his own use; that the defendant was the owner and occupier of lands in the parish, on which he had had wheat, barley, oats, hay, wood, and other titheable things, the tithes of which he had refused to pay. The bill therefore prayed an account.

The defendant *John Robinson* said, that the plaintiff claimed the great tithes in some places in the parish; that in other parts thereof there were permanent and binding compositions due to them in lieu of the tithes; that other parts were wholly exempt from tithes; that many other parts had lawfully ceased to be titheable in kind; and that he therefore referred the plaintiffs to such proof as they should be able to make of their title and interest therein. He admitted, that he was the owner of the *Manor of Wyck*, sometimes called *Wick*, within the parish of *Isleworth*; that he also owned and occupied lands reputed to be within the said manor, containing about one hundred and seventy acres; that he had had yearly upon the said lands divers matters

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matters and things, which if the tithes thereof were payable, would have yielded great tithes; but he insisted, that tithes were not payable in respect thereof; and that acting under that belief, he had kept no account thereof. He also insisted, that the plaintiff *Godin*, even if he was entitled to the great tithes in other parts of the parish, was not entitled to any tithes from the defendant; for that the *Manor of Wych*, sometimes called *Weck*, and all the lands within or parcel thereof were until and at the time of the dissolution of the late *Monastery of Sion* in the said county, parcel of the possessions of the said monastery, and were before and at the time of the said dissolution, by prescription, composition, or by other lawful ways and means, free and discharged from the payment of tithes, and that they had been so by them held and enjoyed; that the said monastery was one of the greater monasteries; that it was dissolved by 31. *Hen. 8. c. 12*; that the said monastery, and all the manors, lands, tenements, and hereditaments thereunto belonging, were, by the same statute, given to and vested in *Henry the Eighth*, with all the exemptions, privileges, and advantages thereto belonging, in as full and ample manner to all intents and purposes as the abbot and convent of the said monastery had held and enjoyed the same, and that the crown afterwards duly granted out the said *Manor of Wych*, sometimes called *Weck*, and all the lands within and parcel of the same to certain persons, from and under whom, by virtue of divers mesne conveyances, the said manor, and all the lands within the same, were duly vested in him; and he insisted, that by virtue thereof, they were held as aforesaid freed and discharged from the payment of all tithes in kind whatsoever; but he further insisted, that if it should appear that the said lands were not discharged as aforesaid at the time of the dissolution, they ought to be presumed to have been since that time in like manner discharged; because that not only the said lands, but also the rectory of *Isleworth*, had, after the dissolution, and during some years, belonged to one and the same *lay proprietor*, who was capable of exempting and discharging the said lands in manner aforesaid without the aid of such formalities as were required in the case of a *spiritual rector*; and that the said lands and the said rectory did also at other times belong to different persons, both in like manner *lay proprietors*, and not fettered with any restraints, such as disable ecclesiastical persons. He further said, that holding and deeming the said manor and lands of *Wych* to be tithe free, he claimed to hold and enjoy the same tithe free, and had disputed the demand of the plaintiffs, inasmuch as they, as well as himself, must derive their title through *lay proprietors* capable of all the several modes of alienating and extinguishing their respective rights; and that as he, the defendant, had for a course of years been as much in the adverse possession of his exemption within the said

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AND CANONS
OF WINDSOR
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land as the plaintiffs had been of their tithes in certain other parts of the parish, they ought to establish their right, and defeat the defendant's possession and title by an action at law, before they could be entitled to a decree for an account founded upon an imaginary wrongful subtraction.

The plaintiffs replied; the defendant rejoined; and witnesses were examined on the part of the plaintiffs only; and on hearing the cause, and counsel, and reading the following evidence for the plaintiffs, viz. an office copy of a grant from *Edward the Sixth*, dated the seventh of *October*, in the first year of his reign, to the dean and canons of his majesty's free chapel of *Saint George*, within his CASTLE OF WINDSOR, of the rectory of *Isleworth* and *Twickenham*, in the county of *Middlesex*, the depositions of several witnesses taken in the cause; and the following evidence for the defendant, viz. the minister's account of the honour or manor of *Hampton Court*, dated the thirty-second of *Henry the Eighth*; a grant from *Edward the Sixth* to the *Duke of Somerset*, dated the sixteenth of *July*, the first year of *Edward the Sixth*; another grant, dated the thirteenth of *June*, the third and fourth year of *Philip and Mary*, to *Augustine Thayer* and *Alexander Chesnal*; and hearing the reply;

THE COURT ordered the deputy to take an account of what was due for the several titheable matters subtracted by the defendant since *Michaelmas* 1790 from off his lands in the parish of *Isleworth*, and the titheable places thereof in the pleadings of this cause mentioned, with costs.

MACDONALD, *Chief Baron*.
HOTHAM, *Baron*.
THOMSON, *Baron*.

TRIN. TERM,
38. GEO. 3.

HOWARD against BOVINGDON.

Hertfordshire, 14th May 1798.

The lessee of the parsonage of *Rickmansworth* in *Hertfordshire*, claims the tithes of the aftermath of hay, and the rakings of corn and other grain; and states, that the defendant had made his barley and oats into cocks from the swath with a fork, without raking up the cocks; and pretended, that the

THE bill stated, that the plaintiff was, in the year 1796, by virtue of certain mesne assignments, possessed of the parsonage of *Rickmansworth*, in *Hertfordshire*, and entitled to all the tithes of corn, hay, and other profits whatsoever thereto belonging for a term of twenty-one years, particularly the tithes of barley and hay, whether the same arose from a first or a second crop; that since *January* 1796, the defendant *Bovingdon* had occupied a farm in the said parish, and had had thereon barley, oats, and a second crop of hay; that previous to the same being cut, he the plaintiff, on the twenty-fifth day of *July*, caused into cocks from the swath with a fork, without raking up the cocks; and pretended, that the tithe of the aftermath belonged to the vicar.

a notice

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against
BOVINGDON.

notice to be served on him, viz. "I hereby desire you to
set out all my tithes on your lands at the approaching harvest
fairly and fully. I give you this previous notice so to do, be-
cause in case you fail herein, it will be absolutely necessary
for me to proceed against you in such manner as I may be
advised. Dated this twenty fifth day of *July* 1796;" that
the said defendant had refused to comply with such notice,
and had caused his barley and oats to be made into cocks or
heaps from the swaths with a fork, without raking the barley
and oats left in such swaths, and laying around such cocks;
and had insisted on his, the plaintiff's, taking the tithe thereof in
that state, alledging that he was not entitled to the tithe of such
rakings; that the defendant had refused to set out any tithe
in respect of his second crop of hay, pretending that the same
did not belong to the plaintiff but to the vicar of the parish;
but he charged, that as lessee he was entitled to the tithe
of all hay yearly cut in the parish, whether a first or second
crop, to have the tithes of barley and oats fairly set out, and
in order thereto, to have the barley and oats left in the swaths
from which the cocks or heaps were made, raked up into the
same before the tithe thereof was set out, as such tithe could
not be fairly set out without such raking; that it had always
been customary in the parish, in setting out the tithes of
barley and oats, for the farmer, after mowing, to put the same
into cocks or heaps from the swaths with a fork, and then to rake
the barley and oats so left under the swath, and lying around
each cock or heap; and afterwards to place a bough upon
every tenth cock which the rector or his lessee was entitled to take
away, with the particular raking to each tenth cock belonging;
but that the defendant had subtracted the tithe of such second
crop of hay, and had refused to make him any satisfaction for
the same, or to cock his barley and oats for tithing otherwise
than as aforesaid; that he had threatened to dispute such cus-
tom when plaintiff's witnesses, who were old, should be dead;
that thereupon the plaintiff caused the following further notice
to be served on him, viz. "SIR, As you have not set out my
tithes fully and fairly, it will be necessary for me to commence
against you such proceedings as will be proper to do myself jus-
tice; but I am desirous to do this with as little loss or inconve-
nience as possible both to you and myself: I therefore propose
to take away all the tithes you have set out for me, except only
a few cocks; but I desire you to observe, that in so doing I do
not accept it as my full tithe, nor waive any objection to the
unfair manner in which it has been set out, but merely with
a view to prevent its being wasted by remaining on the ground.
DATED the nineteenth of *August* 1796;" that he the plaintiff,
in pursuance thereof, carried away the barley so imperfectly set
out for him by the defendant, except six cocks only; that the
defendant carried away the rest, with all the rakings, and

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against
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that the vicar insisted on such claim as aforesaid. The bill therefore prayed, that it might be declared that plaintiff was entitled to the tithe of all hay yearly arising in the parish; that the defendant *Bovingdon* might account with him for the full tithes of such barley and the tithe of the second crop of hay which he had in the year 1796; that he, the plaintiff, might be at liberty to examine his witnesses in support of such custom as aforesaid, in order to *perpetuate their testimony*; and that all proper issues might be directed which might be necessary in the progress of the suit.

The defendant says, that the plaintiff is only entitled to the great tithes; that the *aftermath* of hay is a small tithe, and belongs to the vicar;

and that, by the custom of the parish, barley and oats were also made into cocks from the swath without raking; that the cocks are called *wads*, and that he had set out the tenth wad according to such custom fairly; that the plaintiff had an advantage in the tithes being set out before the fields were raked.

The defendant *Bovingdon* admitted, that the plaintiff was lessee of the parsonage, and entitled to the great and predial tithes arising therein, particularly to all the tithes of barley, oats, and the first crop of hay; but he denied that he was entitled to the tithe of any other crop of hay. He also insisted, that he was entitled to predial tithes only, and not to vicarial tithes, and that the tithe of hay, except of the first crop, was a vicarial tithe, and payable to the vicar. He admitted, that he occupied *Cromley Hall Farm* and other lands in the parish; that part thereof was meadow; that about thirty acres of it had been mowed for a second crop; that he had also had on his said lands several acres of barley and oats, and some clover for a second crop, preserved for seed, which he submitted was clearly a vicarial tithe. He denied, that he had ever declared that he intended not to set out the tithes of his barley and oats fairly, though he believed he had declared that he would neither give *the rakings* or *the second crop*. He admitted, that the plaintiff had caused such notices to be served on him; and insisted, that he had set out all the tithes fairly at the then last harvest, agreeable to the custom of setting out such tithes from time immemorial used in the parish; that he had caused his barley and oats to be made into cocks from the swaths, with a fork usually made use of for that purpose, without raking; that when his barley was mowed, he threw the swaths into little cocks (which in said parish, and county were called *wads*; that part of the corn was tithed, by allotting the tenth wad or cock for the tithe by the plaintiff's tithing-man, but that the principal part of the barley was tithed by the defendant's sons in the same manner with the privity of the tithing-man; that his corn had been tithed in former years, but that the rakings had not been added to the wads or cocks since the year 1793. He said, that it was an advantage to the tithing-man as well as to himself to have the corn tithed before the fields were raked, for that when he carried in his corn, the tithing-man came and took the tithes, and scraped up the rakings under the tithe wads with a fork; that he slightly raked under his wads, but left a considerable part of the rakings under the cocks to be raked with the other parts of the grounds which he had not before raked; that when he had raked what remained of the grounds to be raked, the tithing-

man

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man insisted on having the tithe of the rakings when put into cocks or wads, which he would not permit him to have, the said tithing-man having raked under his tithe cocks; that he, the defendant, not having raked clean under any of the cocks carried by him, the tithing-man said he would be satisfied if he the defendant would set out every twentieth or thirtieth wad of his rakings; that he had persisted in refusing to permit the tithing-man to take any tithe of the rakings so left in part unraked, which were not any part of the rakings belonging to the tithe cocks or wads; and he insisted that the rector was not entitled to any such tithe. He denied, that any corn had been left for raking more than could be avoided, or that he had acted with any intent to defraud the plaintiff; and he insisted, that the tithes had been set out as fairly as they could be; that he was not entitled to the tithe of any of the rakings; that he ought to take the tithes of barley and oats in manner aforesaid; that he had tithed according to the immemorial usage of tithing in such cases, and that the late tithing-man had always taken every eleventh cock or shock of wheat, barley, and oats, if shocked, cocked, and raked, and left in wads without raking the tenth wad. He denied, that the plaintiff was entitled to have the barley and oats left under the swaths from which the cocks and heaps were made, or laying scattered around such cocks and heaps, raked up into the same before the tithe thereof was set out, or that the tithe could not be fairly set out without raking. He admitted it to be customary in the parish, in the setting out the tithes of barley and oats, for the farmer, after mowing, to put the same into cocks or heaps from the swaths with a fork, and then to tithe the same, and place a mark upon every tenth cock; but he said, that he did not believe it to be customary to rake the barley and oats which might be left under such swaths, and lying round each cock or heap, and which were called *rakings*, before the tithe cock was set out, such rakings being usually done afterwards. He admitted, that he did subtract the second crop of hay; and insisted, that he was not bound to make the plaintiff any satisfaction in respect thereof, or to cock his barley and oats for tithing otherwise, and believed that plaintiff did carry away the barley as the same was set out, except six cocks. He further said, that the plaintiff having in the year 1793 brought an action of debt against him in the court of king's bench, upon the statute of subtraction of tithes, and made the cause of such action the not setting out the tithe of *the rakings* of his barley, the said action was tried, and a verdict found in favour of the defendant, and that he had been ever since very circumspect respecting the rakings. He further said, that the plaintiff had sent to see the swaths fairly thrown in, and had never objected to them to the knowledge of the defendant. He admitted, that he had carried away the whole of the rakings; that the whole of the crops of barley and oats, when mowed

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had been put into cocks or heaps without raking; that some small quantities had, for want of raking after such crop was cocked, been left upon the land; that after the several cocks, put together in manner aforesaid, had been taken away, what was left under the swaths and scattered around the cocks were, by the defendant's order, raked together and carried away; and that he had not made the plaintiff any compensation whatever for the tithe thereof.

The vicar dis-
claims all title to
the tithes of af-
termath.

The defendant *Alexander*, the vicar of the parish, claimed the small tithes, particularly the tithe of agistment of barren and unprofitable cattle; but he disclaimed all right to great tithes, and the tithe of hay made from either the first or second crop of grass mowed in the parish; and therefore he insisted, that he ought not to have been made a party to the suit.

The cause
heard.

The plaintiff replied; the defendant's rejoined; and, the cause being at issue, divers witnesses were examined on the part of the plaintiff; and their depositions being duly published, the cause came on to be heard this day; and upon hearing counsel for all parties; and reading the depositions on the part of the plaintiff; and on full debate had;

The tithe of the
aftermath and
rakings decreed
as demanded
by the bill

THE COURT declared the plaintiff entitled to the tithes of the second crop of grass mowed for hay; to have the barley set out for tithing in cocks or heaps; to have the corn, scattered around such cocks or heaps, raked up to the same before it is tithed; and to take away the said tithes with the rakings thereto belonging.

for the years
1796 and 1797,
with costs;

THE COURT thereupon ordered the deputy to take an account of the tithes of the second crop of hay mowed on the grounds of the defendant for the years 1796 and 1797; of the tithes of barley cut and mowed upon his lands in the said years as prayed by the bill; and to tax the plaintiff and the defendant *Alexander* their costs of this suit.

and payment or-
dered accord-
ingly.

THE COURT further ordered *J. Bovington* to pay what should be found to be due upon the said accounts, with costs.

THE COURT FULL.

EASTER TERM,
38. Geo. 3.

TATE against SKELTON.

Lincolnshire, 15th May 1798.

The lands in the
parish of Co-
ningby, in Lin-
colnshire, which
were formerly
in the manurance
of the owners thereof.

THE rector of *Coningby*, in the county of *Lincoln*, claimed the great and small tithes of the parish; and prayed, that the defendants might set forth a true account of all and singular parcel of the possessions of the *Abbey of Kirkstead*, an abbey of the *Cistercian order*, and of the abbot and convent at the time it was dissolved are tithe free, while in the manurance of the owners thereof.

the

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the lands occupied by them respectively since the plaintiff's institution in *June* 1792; the quantities and qualities of such lands; the names of the closes of which the same consisted; the titheable matters and things which had arisen thereon; and account with him for the value thereof.

The defendants admitted, that the plaintiff was rector, and as such entitled to the great and small tithes arising in the parish; that they were severally in the possession, and seised of the estates of inheritance of the messuages, cottages, tenements, farms, lands, and grounds in the said rectory and parish, as described in their answers; and said, that all their said premises had been formerly part of the possessions of the *Abbey of Kirkstead*; that the said abbey was of the order of *Cisterians*; that it was dissolved by *Henry the Eighth*, and all its possessions, including the said lands, tenements, and hereditaments, vested in the crown; that at the time of the dissolution, the said lands, tenements, and hereditaments, were in the manurance and occupation of the abbot and convent of the said abbey; that the said abbey and convent, at the time of the said dissolution, held the said lands, tenements, and hereditaments discharged and exempt from the payment of all manner of tithes; that the said lands, tenements, and hereditaments had, by a grant from the crown, and by divers mesne conveyances, become vested in them, and in *Eustace Parrot* and *John Randsley*; that they were severally seised of the said estates of inheritance therein also mentioned; and they insisted, that all the said lands, tenements, and hereditaments which were so severally in their possession, were discharged and exempted from the payment of all and all manner of tithes, when and as often as the same were in the manurance and occupation of the owners thereof; and that no tithes in kind, or any composition or satisfaction in lieu thereof, had ever been set out or paid for the said lands, tenements, and hereditaments, or any of them, at any time when the same were in the manurance or occupation of the owners of the inheritance thereof; and that the said lands, tenements, and hereditaments having been in the occupation of the owners thereof during the whole of the time that the plaintiff had been rector, they ought not to be compelled to account to him for the tithes which had arisen on the said premises, or any part thereof, during the time that he had been rector; and they hoped that they should have the same benefit of the several matters aforesaid as if they had pleaded the same in bar to the relief sought by the bill. They further said, that they had, in a schedule to their said answer, set forth an account of all and singular the titheable matters and things had by them respectively on their said lands and premises, since the time that the plaintiff was instituted and inducted into the rectory, distinguishing therein which of the said titheable matters and things had arisen on the lands and premises of each of them respectively, and insisted

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that they ought not to be compelled to come to any account with the plaintiff, or to make him any satisfaction in respect of the tithes demanded by his bill.

The plaintiff replied; the defendants rejoined; and the cause being at issue, several witnesses were examined on the part of the defendants only; and publication being duly passed, the cause came on to be heard; and upon hearing counsel for all parties several days; and reading the following evidence for the defendants, viz. the depositions of *John Caley*, gentleman; an office copy of a charter of the thirty-sixth year of *Henry the Third* from THE TOWER; the depositions of several witnesses taken in the cause; the minister's accounts of the twenty-ninth year of *Henry the Eighth*; two decrees in this court, the one dated the eighth of *February 1654 (a)*, and the other dated the

(a) This cause of *Skelton v. Banks* came before the court on the sixth of February, Hilary Term, 6. Car. 2. The plaintiff was rector of *Coringby*; and demanded, in particular, by his bill, the tithes of the wool and lambs of sheep, the milk of the cows, and the agistments of the barren and unprofitable cattle that had been fed by the defendant on his farm, in the precincts of the parish, and on the common or fen called *Wildmore Fen* lying therein. The defendant answered, and pleaded to the bill, and taking it by protestation that *Wildmore Fen* did not lie in the parish or in the precincts thereof, for plea said, that *Richard Harrison*, late abbot of the abbey of *Kirkstoad*, was seised in his demesne as of fee in right of the abbey of and in the manor of *Arinsfree* otherwise *Harmfree*, in the county of *Lincoln*, and of a parcel of moor land or fen ground called *Wildmore Fen*, containing one thousand one hundred acres, to the said monastery belonging; that it was parcel of the possessions of the said monastery in the eleventh year of *King John*; that it continued part and parcel thereof until the monastery was dissolved; that the said abbot and all his predecessors were of the *Cistercian* order; that they were freed from the payment of all the tithes for their manor, lands, and premises, so long as they should be in their own hands, or tilled at their own charges, and not letten to farm; that the said monastery, manor, and fen grounds came to *Henry the Eighth* by the attainder of the said *Richard Harrison*; that *Henry the Eighth* by letters patent, dated the nineteenth of March, in the thirtieth year of his reign, granted the same in fee simple to *Charles Brandon, Duke of Suffolk*; that by the thirty-first of *Henry the Eighth* c. 12. the duke held the same discharged of tithes as aforesaid; that the duke and others, his grantees, con-

veyed them by mesne conveyances to *R. Dymocke* in fee; that *R. Dymocke*, on the tenth of February, in the twentieth year of the reign of *Queen Elizabeth*, sold to *A. Godney* and *W. Heneage* all that his farm, grange, and booth in *Whitmore* otherwise *Wildmore* aforesaid, called or known by the name of *Moor Booth*, then divided into two parts called the *North Part* and the *South Part* of *Moor Booth*, and all houses, &c. with all and singular the appurtenances, &c. thereunto belonging, as fully set forth in the plea; that *Godney* and *Heneage* being so seised, conveyed the same to the defendant's father in fee simple; and that his father devised the same to him by his last will. The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides; and forasmuch as the defendant had alledged that the lands out of which the tithes were claimed were tithe free, the court directed that an action should be brought by the plaintiff against the defendant to try that question. An action was accordingly brought, and the defendant appeared, pleaded, and attended at the trial, but the plaintiff was nonsuited. Afterwards in Hilary Term, a new action was directed to be brought, with this special direction, that if the plaintiff should neglect to proceed, the defendant might proceed. After frequent delays made by the plaintiff, he totally neglected to try the cause, and he was again nonsuited for non-attendance. On the tenth of November 1656, the cause came before the court of exchequer upon further hearing; and on reading this order, and the *positas* in which the said nonsuits were recorded, and upon bearing counsel on both sides, and upon consideration had of all the said proceedings, THE COURT ordered the bill to be dismissed, and it was dismissed accordingly by *Baron Nicholas* and *Baron Parker*.

tenth

tenth of *November* 1656, in a cause wherein *William Skelton* was plaintiff, and *William Banks* was defendant; and upon hearing the reply, the cause was ordered to stand over for the judgment of the Court; and the cause now standing in the paper of causes;

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THE LORD CHIEF BARON delivered the same; and, the plaintiff declining to take the issues offered by the Court, it was thereupon ordered and decreed, that the bill be dismissed, with costs.

THE COURT FULL.

ZOUCH *against* HUDSON.

EASTER TERM,
38. GEO. 3.

Yorkshire, 15th May 1798.

THE rector of *Seringham*, in the county of *York*, claimed the great and small tithes of the parish; and said, that the defendant *J. Hudson* and others had, since the twenty-fourth day of *June* 1794 (at or before which time the plaintiff had given them notice in writing to set out their tithes in kind, (except certain tithes, about which the defendants *J.* and *R. Hudson* had agreed with him for a composition) severally occupied farms, the property of the defendants *H. Cholmley* and *Sir J. N. Innes*, in the township of *Housham*, in the said parish; that they (except the defendant *Innes*) had respectively depastured sheep, oxen, horses, and other barren and unprofitable cattle, cows which had milk and calves, ewes, lambs, and other sheep; that they had had thereon wheat, barley, oats, rye, pease, beans, hay, clover, apples, pears, and garden stuff; that the defendant *Cholmley* was seised or otherwise entitled to a certain *water corn mill* in the said township; that he was in the actual occupation thereof; that he had employed servants to work the same, and had had divers quantities of corn ground thereby for profit and hire, the tithes of all which they had refused to pay, on pretence that some parts of the said farms consisted of *Demefne Lands* and *the Almoner's Lands*, in the said township, and were discharged from the payment of any tithes to the rector; that the defendant *Cholmley* had pretended, that a part of his farm, together with *the Mill*, were freed from tithes by reason of a *modus* of six pounds to the rector. The bill therefore prayed, that the plaintiff's right, as rector, to the several titheable matters and things, might be established; that a commission, if necessary, might issue to ascertain the lands in the occupation of the defendants in the township of *Housham*, which were either covered by a *modus* of six pounds, or discharged from tithes under the denomination of *Demefne Lands* or *Almoner's Lands*, or otherwise; that the defendants might be ordered to produce all deeds and writings in their or any of their custody or power touching the matters aforesaid; that they might

The rector of *Seringham*, in *Yorkshire*, claims the great and small tithes of township of *Housham* in the said parish, and particularly the tithes of a *water corn mill* situated in the said township;

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might be decreed to account for all the said tithes, or such of them as the plaintiff should appear to be entitled to, and to pay what should be found due to him upon the taking of such account.

The defendants say, that there are certain lands in the township of *Housham* to the tithes of the corn and grain, of which the rector is only entitled to the *one in thirtieth part*;

The defendants, except *Innes*, admitted, that the plaintiff was rector, and entitled to all the tithes, both great and small, arising in the township of *Housham*, or to some satisfaction in lieu thereof, except the tithes of certain lands therein, from which he was entitled to the *one in thirtieth part* only of the corn and grain grown thereon when the same were in an arable state, but which from error or change of language had sometimes been called or described as the *one AND thirtieth part*; except the tithes of *Housham Mill*; and except the tithes in kind of such titheable matters in the township, in lieu whereof *modus*es were payable; but that as to his right or title to the tithes of that part of the parish which did not include the township, they were totally ignorant.

that the mill and other lands belonging to *Cholmley*,

The defendant *Cholmley* said, that ever since the twenty-fourth day of *June 1794*, he had been, and still was in right of his wife, entitled to a considerable estate in the said township, part whereof, during the said time, had been in his occupation; that is to say, the family mansion-house, the lawn and gardens, the paddock and shrubbery, certain inclosures near *Housham Mill*, the said mill, the mill garth, and several fields as described in his answer.

and in the possession of his tenants,

The defendants *J. Lease* and *John Hudson* said, that they had, ever since that period, held as tenants to the said *Cholmley* certain other parts of his estates in *Housham*, as stated in the answer.

and the lands belonging to *Innes* are in the township;

The defendants *W. Marshall*, *R. Hudson*, *F. Thomas*, and *T. Taylor* said, that they had, during the said time, occupied as tenants to *Innes*, the several farms in the township, as set forth in their answer.

that they are willing to pay the said *one in thirtieth part* of the corn and grain arising thereon;

The said defendants further said, that they had set out the nature, quantities, and values of their several titheable matters and things; that they were willing to account for a *one in thirtieth part* of the crop of corn produced from the closes therein mentioned; that they had already satisfied him the value of all tithes arising from certain lands in their answer described; but submitted, that the tithes of several lands, also described, ought not to be set out and rendered to the plaintiff for the reasons stated.

that *Housham Mill*, on the site of which the water corn mill was erected, was a portion of tithes in gross, separated from the rectory, and formerly parcel of the possessions of the *Abbey of Kirkham*;

The defendant *Cholmley* insisted, that all the tithes arising from *Housham Water Corn Mill*, in the said township, on the site

site

site whereof the said *Water Corn Mill* was then erected and stood, were a *portion of tithes in gross*, separate and distinct from the rectory; that the lands were part of the possessions of the prior and convent of the priory of *Kirkham*, in the county of *York*, long before, and at the dissolution of the said priory; that the said priory was one of the greater monasteries; that it was dissolved by *Henry the Eighth*; that all the lands, tenements, tithes, hereditaments, and possessions whatsoever, with the rights and appurtenances thereto belonging, were, at the time of its dissolution, vested in *Henry the Eighth*, in the same state and condition as the prior and convent had held and enjoyed the same; and that by virtue of the 31. *Hen. 8.* the said *portion of tithes*, arising from the said ancient mill in the said township, became absolutely vested in *Henry the Eighth*, his successors, and his and their grantees and patentees thereof for the time being, separately and distinctly from the rectory of *Seravingham*, in as ample manner as the same had been held and enjoyed by the prior and convent before and at the time of the dissolution of the priory; that the same had never since been united, or had otherwise belonged to the rectory or the rector thereof; that therefore the plaintiff was not entitled to any part of the tithes arising from the said *water corn mill* then standing on the site of the ancient mill called *Housbam Mill*, in right of the said rectory; and that by divers grants, the beneficial interest in the said *portion of tithes* became vested in trustees for the use of the defendant in right of his wife, and after her decease to such other persons as were named in the will of the late *Nathaniel Chalmley* deceased.

Zouch
'gainst
Hudson

that the said portion of tithes became vested in *Henry the Eighth*, on the dissolution of the abbey;

that the said portion had never been united to the rectory;

and that it had been legally conveyed to them;

The defendants insisted, that the several closes, woods, and parcels of land lying in the said township, specified in their said answers, were free from tithes in kind, and that some small annual compositions had been usually paid to the rector in lieu thereof; and they insisted on a *modus* of six pounds in lieu of the tithes of the several closes, woods, and parcels of land so claimed by them to be held free from the payment of tithes in kind,

that a *modus* of 6l. a-year had been paid in lieu of the tithes of other lands in the said township;

The defendant *F. Thomas* insisted, that the several closes and parcels of land in the said township in his occupation, as stated in his answer, were free from all tithes in kind whatsoever; and insisted on a *modus* of seven shillings and sixpence in lieu thereof.

that a *modus* of 7s. 6d. an acre was payable in lieu of the tithes of other lands in the said township;

The defendant *Taylor* insisted on a like *modus* of ten shillings for his closes and lands.

that a *modus* of 10s. was payable for other lands;

All the defendants, except *Innes*, said, that the lands in the township, from which the plaintiff was entitled to the *one in thirtieth part* only of the corn and grain growing thereon when

that the tithe of the said lands, except the *one in thirtieth part* of the rectory.

fore said, was a portion of tithes in gross, distinct from

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that the said por-
tion of tithes
was the proper-
ty of the defend-
ants *Cholmley* and
Innes;

that the said
lands were not
called and distin-
guished by the
name of the
Almoner's Lands;

that the said
lands were par-
ticularly describ-
ed in schedules
to the answer;

the same were in an arable state, consisted of the several closes and parcels of land described in their answers; and insisted, that all the tithes yearly and from time arising and increasing from the said closes and parcels of land so described, except the *one in thirtieth part* of the corn and grain arising therefrom, when the same were in an arable state, or one third part of the whole tithe of corn and grain were a *portion of tithes in gross*, separate and distinct from the rectory, and formerly parcel of the possessions of the said prior and convent of the *Priory of Kirkham*, long before and at the dissolution of the said priory; that the said priory was one of the greater monasteries; that all the lands thereto belonging were, at the time of the dissolution thereof, vested in *Henry the Eighth* in the same condition as the prior and convent had held the same; that by 31. *Hen 8.* the said *portion of tithes* became vested in the said king and his grantees, separate and distinct from the rectory, in as ample manner as the same had been held and enjoyed by the prior and convent before and at the time of the dissolution; that it had never since been restored or united to the rectory; and that therefore the plaintiff was not entitled to have or claim any part of the tithes arising from the said closes and parcels of land in right of his said rectory, otherwise than before-mentioned; and they insisted, that by divers goods and sufficient grants, conveyances, and assurances in the law, the beneficial interest in the said *portion of tithes* arising from such closes and parcels of land so specified to be the property of the defendants *Cholmley* and *Innes*, and in the occupation of the other defendants; and the closes and parcels of land so specified in their answers were the whole of the lands and grounds within the said township, subject to the payment of a *one in thirtieth part* only to the plaintiff, as rector in lieu of tithes when in an arable state; but knew not that the lands and grounds in the said township of that description had been known or distinguished by the name of *the Demesne Lands*, otherwise than as appeared by some of the terriers of the rectory where they were distinguished by such name; or by the name of the *Almoner's Lands*; or by any other particular name or description, other than as set forth in their answers.

The defendant *Cholmley* said, that he had, in a schedule to his answer, set forth an account of all the deeds and writings in his possession, custody, or power, which shewed or tended to shew what lands in particular within the said township in his occupation, and the said defendants, his tenants, were claimed to be free from payment of tithes to the plaintiff, by reason of the claims and exemptions aforesaid, or any of them, and submitted to the court whether the plaintiff had any pretence whatever to have his alleged right established, forasmuch as the right claim-

ed

ed by him, if any such right existed, was founded altogether in the common law; and also whether such commission for ascertaining the particulars of the lands and grounds in the said township, and in the occupation of these defendants, ought not to be issued and executed at his expence, they insisting that the plaintiff ought to seek his remedy by action at law for the tithes alledged to be withheld from him, and particularly for the portions of tithes claimed by these defendants.

Zoven
against
Hudson.

The defendant *Innes* admitted, that the plaintiff was rector of the parish, and entitled to the tithes, both great and small, yearly arising in and throughout the said township, or to some satisfaction for the same, except some particular grounds from which he was only entitled to a *one in thirtieth* part of the corn and grain grown thereon, when the same were in an arable state; and also except the tithe of *Housham Mill*, and the tithe in kind of such other titheable matters and things arising within the said township, in lieu whereof certain ancient customary payments had been immemorially made by way of *modus*. He further said, that he had been, ever since the twenty-fourth day of *June* 1794, and was still owner and proprietor of certain farms within the township, in the occupations of several of the defendants, the particulars of which farms he stated in his answer in like manner as his tenants, and spoke to the same effect touching the *modus* of six pounds, the compositions of ten shillings, and of seven shillings and sixpence, and the other matters in the bill specified, as the other defendants had done.

and that the said *one in thirtieth* part of corn and grain, the said exemption of *Housham Mill*, the said *modus* of 6l. and the said composition of 7s. 6d. and 10s. were good *moduses*, and exemptions.

The plaintiff replied; the defendants rejoined; and the cause being at issue, divers witnesses were examined on both sides, and their depositions being duly published, the cause came on for hearing; and upon hearing counsel for all parties; and reading an order obtained by the defendants on the fifth day of *May* 1798, for proving and reading the following evidence on their behalf, *to wit*, the minister's accounts from the augmentation office of the possessions of the *Priory of Kirkham*, from *Michaelmas* in the thirtieth to *Michaelmas* in the thirty-first year of *Henry the Eighth*; an office copy, from THE ROLLS CHAPEL, of a licence from *Queen Elizabeth* to *Edward Earl of Rutland*, dated the twenty-ninth day of *April*, in the fourteenth year of *Queen Elizabeth*, to alienate the *Manor of Howsome* alias *Owsbam*, in the county of *York*; an office copy, from THE ROLLS, of an indenture of bargain and sale, dated the third day of *April*, in the fourteenth year of *Queen Elizabeth*, between the said *Earl of Rutland* and *Lord Roos of Hamlake, Toustby*, and *Belvoys* of the one part, and *Thomas Hamburgh*, of *Howsom*, alias *Owsbam*, in the county of *York*, gentleman, of the other part; an office copy from the rolls of a deed poll,

The cause heard.

dated

Zouch
against
Hudson.

dated the eleventh day of *February*, in the fifteenth year of *Queen Elizabeth*, and executed by the *Earl of Rutland* to acknowledge the receipt of one thousand two hundred pounds; an office copy of the bill, answers and depositions in a cause heretofore instituted in this court, wherein *William Allanson*, clerk, was plaintiff, and *Isaac Calaam* and others were defendants; the depositions of the witnesses taken on the part of the defendants, in the cause of *Zouch v. Hudson*, and several original terriers respecting the rectory of *Serayingham*, in the county of *York*; and also the several writings proved as exhibits in the cause; and also reading on the part of the plaintiff the several depositions taken on his part; and an order of court, dated the sixth day of *May* 1797, for liberty to read in evidence the several proceedings in the said cause of *Allanson and Calaam*; and reading them;

Issue directed to
try,

THE COURT ordered a trial at law upon the following issues, to wit,

1st. Whether a
modus of 6l. a-
year is payable
on *Michaelmas*
Day in lieu of the
tithes of the
lands described.

FIRST, "Whether a *modus* of six pounds a-year is and has been, from time whereof the memory of man is not to the contrary, paid on *Old Michaelmas Day* in each year, to the rector of the parish of *Serangham* otherwise *Serayingham*, for the time being, for and in lieu of the tithes of all titheable matters and things yearly growing, increasing, and renewing upon the several lands, closes, woods, and hereditaments within the township of *Housbam*, in the said parish of *Serangham* otherwise *Serayingham*, in the defendant's answer fully set forth and described."

2dly. Whether
the tithes of the
other lands in the
township, ex-
cept the one in
substant part, are
a portion of tithes
in gross, distinct
from the rec-
tory.

SECONDLY, "Whether all the tithes yearly arising from the following closes and parcels of land lying within the township of *Housbam*; in the parish of *Serangham* otherwise *Serayingham*, in the county of *York* (as in the said answers are described), except one third part of the tithes of corn and grain arising from the closes and parcels of land particularly mentioned therein, when the same are in an arable state, be a portion of tithes in gross, separate and distinct from the rectory of *Serangham* otherwise *Serayingham*."

3dly. Whether
Housbam Mill is
a portion of tithes
in gross distinct
from the rec-
tory.

THIRDLY, "Whether all the tithes yearly from time to time arising from a certain water corn mill called *Housbam Mill*, situate in the township of *Housbam*, in the parish of *Serangham* otherwise *Serayingham*, in the county of *York*, on the site whereof a water corn mill is now erected and stands, be a portion of tithes in gross, separate and distinct from the rectory of *Serangham* otherwise *Serayingham*."

The defendants
in equity to be
plaintiffs at law.

The defendants in equity, *H. Cholmley* and *Sir James Boddiffe Innes*, to be plaintiffs at law, and *Thomas Zouch* to be defendant; the judge to be at liberty to indorse any thing special; with the usual directions.

The

The plaintiff in equity declined accepting issues upon the *modus* of seven shillings and sixpence, and ten shillings.

THE COURT therefore further ordered the bill to be dismissed as to the *modus* of seven shillings and sixpence, and ten shillings; and the consideration of costs and further directions to be reserved till after the trial should be had.

The issues were accordingly tried by a special jury, and the jury found,

AS TO THE FIRST ISSUE, "That a *modus* of six pounds a-year is not, nor from time whereof the memory of man is not to the contrary, hath been paid or payable by the occupier or occupiers of the within several lands, closes, woods, hereditaments, and premises, in the within mentioned first count of the within-mentioned declaration in that behalf mentioned, except as therein mentioned, on *Michaelmas Day* in each year, according to the old stile and computation of time heretofore used in this kingdom, to or for the use of the rector for the time being of the rectory of the parish of *Serangham*, otherwise *Serayingham*, in the county aforesaid within-mentioned, or his lessee or lessees of the tithes of the same parish for and in lieu and full satisfaction of and for the tithes of all titheable matters and things yearly arising, growing, increasing, and renewing upon the same lands, closes, wood, hereditaments, and premises in the same count within mentioned, except as aforesaid, as the said *Henry* and *Sir James Norcliffe* have in the said first count of the said declaration in that behalf within alledged."

AS TO THE SECOND ISSUE, "That all the tithes yearly arising from the within mentioned closes and parcels of land, in the second count of the said declaration in that behalf within-mentioned, except one third part of the tithes of corn and grain arising from the said last-mentioned closes and parcels of land when the same were in an arable state, were not nor are a portion of tithes in gross, separate and distinct from the rectory of *Serangham* otherwise *Serayingham* aforesaid, in the county aforesaid, as the said *Henry* and *Sir James Norcliffe* have in their said second count of the within declaration in that behalf within alledged."

AS TO THE LAST ISSUE, "That all the tithes yearly, and from time to time arising from the within-mentioned water corn mill called *Howsham's Mill*, were and are a portion of tithes in gross, separate and distinct from the rectory of *Serangham*, otherwise *Serayingham* within mentioned, in the county aforesaid, as the said *Henry* and *Sir James Norcliffe* have in the last count of the within declaration alledged, and assess the damages of the said *Henry* and *Sir James Norcliffe*, besides their costs

The rector refuses issues on the *modus* of 7s 6d. and 10s.

The bill dismissed as to the tithes of the lands covered by the *modus*.

The issues tried, and the jury found,

1st. That 6l. a-year has not been paid in lieu of the tithes of the lands mentioned.

2d. That the tithes of the other lands are not a portion of tithes in gross.

3dly. That the tithes of *Howsham Mill* are a portion of the tithes in gross.

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against
Hudson.

"costs and charges by them in and about their suit in that behalf laid out to one shilling, and for those costs and charges to forty shillings."

But by indorsement the jury found, 1st, That a modus of 6l. a-year is payable for other lands.

THE SPECIAL INDORSEMENT. And the jurors further said, "That a modus of six pounds a-year is, and from time whereof the memory of man is not to the contrary, hath been paid and payable by the occupier or occupiers of the within-mentioned several lands, closes, woods, hereditaments, and premises in the within-mentioned first Count of the within-mentioned declaration in that behalf mentioned (except the closes called the *High Gamsters*, *Middle Gamsters*, *Low Gamsters*, *Great Ings*, and *Little Ings*, in the first Count mentioned, to which the said modus does not extend) on *Michaelmas Day* in each year, according to the old stile and computation of time heretofore used in this kingdom, to or for the use of the rector for the time being of the rectory of the parish of *Serangham*, otherwise *Seyravingham*, in the county of *York* within mentioned, or his lessee or lessees of the tithes of the same parish for and in lieu and in full satisfaction of and for the tithes of all titheable matters and things yearly arising, growing, increasing, and renewing upon the same lands, closes, woods, hereditaments and premises in the said count mentioned, or any part thereof, except as aforesaid."

2dly. That two third parts of the tithes of the lands mentioned in the second issue, except the *Oxclose* and two-thirds of the tithes of the *Gamsters* and *Ings* are a portion of tithes in gross.

And further, "That two third parts of all manner of tithes yearly arising from the within-mentioned closes and parcels of land in the second Count of the said declaration mentioned (except the close therein called the *Oxclose*), and also two-third parts of all the tithes yearly arising from the said closes called the *High Gamsters*, the *Middle Gamsters*, and the *Low Gamsters*, *Great Ings*, and *Little Ings*, in the first Count of the said declaration mentioned, were and are a portion of tithes in gross, separate and distinct from the rectory of *Serangham*, otherwise *Seyravingham* aforesaid, the remaining third part of such tithes belonging to the said rectory."

3dly. That the rector is entitled to the tithes of the *Oxclose* in kind.

And further, "That all manner of tithes yearly arising from the said closes in the second Count of the said declaration called the *Oxclose*, were and are due and payable to the rector for the time being of the rectory of the parish of *Serangham*, otherwise *Seyravingham* aforesaid."

The judge certifies the indorsement.

MR. JUSTICE ROOKE, who tried the cause, certified that the special matter above indorsed was found by the jury, and indorsed by his direction.

The Court pronounces judgment. The tithes, as found by the jury, decreed, but without costs.

On the twenty-fourth of *January* 1799, the Court heard counsel on both sides; and the Right Honourable SIR ARCHIBALD MACDONALD, KNIGHT, *Lord Chief Baron*, delivered the

judg-

Judgment of the Court, and ordered the *possession* to be confirmed, an account to be taken of the tithes prayed by the bill upon the foot of the *possession*, but without costs; so much of the bill as prayed an account of the tithes arising upon the lands and premises found by the said *possession* in favour of the defendants *H. Cholmley* and *Sir J. N. Innes*, to be dismissed without costs, and no costs to either party at law.

Baron
against
Hutton.

THE COURT FULL.

MANTELL *against* PAINB.

HILARY TERM
38. GEO. 3.

Surrey and Southampton, 10th May 1798.

THE bill stated, that in the year 1791, and at the time of making the lease, dated the sixth of April 1791, the Reverend John Carver, bachelor of laws, archdeacon of Surrey, in right of his archdeaconry, was seised in fee of the three chapels or parsonages of *Frensbam* and *Elsted*, in the county of Surrey, and of *Bentley*, in the county of Southampton, with the rights, members, and appurtenances thereof, and in particular of the tithes of corn, grain, hay, hay grass, clover, artificial grass, wood, except timber and timber trees, the agistment of barren and unprofitable cattle, and all other the tithes, great and small, arising within the said chapels in kind; that before and at the time of making the said lease, the said tithes and premises had been and were let to and occupied by the farmers thereof at a rent therein reserved; that by indenture of lease, dated the sixth of April 1791, the archdeacon demised to the plaintiff and to the defendants *De Burgh* and *Bishop*, all those said three chapels or parsonages, with their appurtenances, and all and all manner of tithes, oblations, obventions, rents, duties, commodities, advantages, and profits to the same belonging, arising yearly therein, to hold to them, their heirs and assigns, for three lives, at a yearly rent therein mentioned; that the said *De Burgh* and *Bishop* were trustees thereof for the plaintiff; that the plaintiff thereby became entitled to the tithes, before stated, in kind; that he had received parts of the same; that he ought to have been satisfied for the remainder; that the defendant *Richard Paine* held a farm in the chapelry of *Frensbam*, and had agisted thereon barren and unprofitable cattle, to the tithes of which, except of the catage upon turnips to Michaelmas 1793, he was entitled; that the said defendant had upon his said farm a number of young pigs; that he had also in the said years cut down, sold, converted, and disposed of for his own use, coppice wood, underwood, and other wood not being timber or timber trees in and upon his said farm; that, during the year 1792, he had reaped and carried away for his own use wheat and other corn and grain therefrom; that in the years 1792 and 1793, and

The plaintiff, as lessee of the chapel of *Frensbam*, in *Surrey*, the chapel of *Elsted*, in *Surrey*, and the chapel of *Bentley*, in *Hampshire*, claims all the tithes, both great and small, thereto belonging in kind, particularly the tithes of pigs, wood, hoppers, fir-trees, milk, artificial grass, and agistment of sheep and barren cattle.

MANTELL
vs
Paine.

since that time, he had kept thereon milch cows which produced milk; and that in 1793 he had drawn up, severed, gathered, carried away, disposed of, and converted to and for his use a number of young firs, fir plants, and other plants and shrubs out of the said farm, the tithes of which he had refused to pay. The bill further stated, that the defendant *J. Golden* occupied a farm in the chapelry of *Bentley*; that he had cut down, sold, and disposed of for his own use, coppice wood, underwood, wood for and made into charcoal, and other wood not being timber or timber trees thereon; that he had also kept barren and unprofitable cattle of different kinds thereon; that he had also mowed clover and artificial grass thereon, and used the same for green fodder and various other purposes; and that he had, in the year 1793, severed, carried away, and converted to his own use great quantities of pease, the tithes of all or any of which he had refused to pay. The bill then further stated, that the defendant *James Mills* occupied a farm in that part of the chapelry of *Frensham* called the tithing of *Dorking field*, and had had thereupon pease, hay, hay grass, and various other titheable matters, the tithes of which he had refused to pay. The bill therefore prayed an account and payment.

The defendant
Paine says, that
 he occupied lands
 in *Frensham*;

The defendants admitted, the plaintiff was lessee of the tithes as stated in the bill; and the defendant *Richard Paine* said, that he occupied certain lands in the chapelry of *Frensham*; that he had paid to the plaintiff a composition for his tithes to the tenth of *October* 1791; that the plaintiff had given him notice to pay his tithes in kind from that time; that he had, after the tenth of *October* 1791, and before the tenth of *October* 1793, agisted sheep on turnips; that he, after the tenth of *October* 1793, rendered the plaintiff an account in writing of the agistment of each sheep, deducting for such as had been shorn and had paid tithe wool; and also an account of the tithes of his calves during the said time, and of some flax; that on the third of *December* 1793 he paid him the amount of such account, and took a receipt for it; that he had not, after the said tenth of *October* 1791, and before the filing of the bill, agisted any horses or oxen, except what were used for husbandry, or any heifers or any barren cows or other unprofitable cattle whatever, except that in the summer of 1793 he had bought in two heifers which were breeding up for the pail, and a yearling colt which he intended for husbandry, and for the feed of which no tithe was due; that he had not, since the tenth of *October* 1793, agisted any sheep except the sheep which he still had, and which were intended to be shorn within the said chapelries, except one hundred sheep which were sold at *Lady Day* last, and which were

that the barren
 cattle he had ag-
 isted thereon
 had been used
 for husbandry,
 except two hei-
 fers bred for the
 pail; and a year-
 ling colt intend-
 ed for the busi-
 ness of the farm;
 that the sheep
 he then had
 were intended
 to be shorn;

that he had paid the tithes of the sheep he had sold; that he had only two pigs in one year and five in another, and that there is a custom to pay one pig for all pigs from seven to ten farrowed in one year;
 fed

fed on turnips, the tithe whereof had been fairly set out; that he had farrowed two pigs in 1792, and five pigs in 1793, and that he had taken such pigs to his own use without making the plaintiff any satisfaction for the tithe thereof, for that there was an immemorial custom in the said chapelries or parsonages, as well as in several neighbouring parishes or districts, that every occupier of lands or tenements within same having any pigs farrowed within same to the number of seven or upwards, and not exceeding ten in number, should render and pay to the owner or proprietor of tithes of the said chapelries or parsonages, or his lessee or farmer, or lessees or farmers, one of such pigs for or in lieu of the tithes of such number of pigs for that year, and that each and every such occupier should not render or pay any satisfaction in respect of the tithes of pigs being under seven in number in any one year." He further said, that he had not, since the tenth of October 1791, cut any coppice wood or underwood on his farm, except that in 1792 he had cut down a small coppice in *Pond Field*, and that he had duly set out the tithe thereof, which the plaintiff had carried away, and except that in 1793 he had also cut down *Foul Hanger Coppice*, but that he had not set out any tithe thereof, because he had converted and applied the principal part thereof to the purpose of making *hop-poles* and *hurdle rods* for the use of his farm, and the remainder for *fuel in his house*; and that by a custom in the said three chapelries or parsonages, except as to the tithing of *Cheert*, respectively which had subsisted from the time whereof the memory of man was not to the contrary, and still subsisted, no tithes of any coppice wood or any other underwood, cut within the said three chapelries, except as to the said tithing, and applied to the purposes of husbandry therein, or for fuel for the house, or any satisfaction in lieu thereof, ought to be rendered or paid to the owner or proprietor of the said three several chapelries or parsonages respectively, or his lessee or farmer, or lessees or farmers. He further said, that by the custom of the *Weald of Surry*, no tithe was due of underwood cut within the tithing of *Cheert*, which was situated within the parish or parsonage of *Frensham*, and is part of the *Weald (a)*, but that no part of his lands was within the said *Tithing of Cheert*; and he further said, that he had set out his tithes of wheat by the sheaf: and he set forth the tithes of milk and calves, fir plants, and other things, and submitted to the Court whether any tithe became due to the plaintiff in respect of fir plants removed from one farm to another farm in a different parish; and denied that he had caused any part of the tithes to be subtracted from the plaintiff, or any part thereof to be set out or left fraudulently or vexatiously for him, contrary to the usage or custom of the country.

MANTELL
against
PAINÉ.

that he had set out the tithe wood of *Pond Field Coppice*;

that the wood cut down in *Foul Hanger Coppice* was used either for *hop poles, hurdle rods*, or burnt as fuel in the house, and that there is a custom in the said chapelries not to pay any tithe for wood so used; that no tithe of underwood was payable in the tithing of *Cheert*, in the *Wealds of Surry*; but that he had no land in the said tithing; that he had set out the tithe of wheat by the sheaf; and that fir trees removed from one farm to another, are not tithable.

(a.) See the case of *Salmon v. Denyer*, Vol. I. page 392.

The defendant *Yalden* says, that he occupies *Bury Court Farm* and *Perry Land Farm*, in the chapelry of *Bentley*, and answering as aforesaid, adds,

that the artificial grass he cut was used in husbandry, except what his saddle horse eat;

that he had set out his pease in wads, according to the custom of the chapelry.

The defendant *John Galden* admitted, that he occupied the greater part of a farm situated in the chapelry of *Bentley*, called *Bury Court Farm*; that the residue was in the possession of the owner thereof; that he also occupied *Perry Land Farm*, in the said chapelry; and he set forth an account of his titheable matters, and spoke to the same effect as the defendant *Paine* had done; but further said, that in the years 1792 and 1793 he cut upon his said farms clover grass, and other artificial grasses, but that they were cut for the necessary use and support of his horses used in husbandry on his said farms within the said chapelries, and were (except what was eaten by his saddle horse) eaten and consumed by his horses used in husbandry. He further said, that he had in the said years also cut and severed thereon pease, and carried away the same, but that he had duly set out the tithe thereof, and left the same for the plaintiff. He denied, that there was any custom or usage as to any particular marks or tokens to be used in setting out the tithes of pease in the said parsonages; and insisted, that they were set out in wads; that each tithe wad was marked with a number of straws which were stuck therein, in the same way as the farmers in the said parsonage had before set out the tithes of their pease, and which the plaintiff had taken away without objecting to such marks, as not being proper or sufficient.

The defendant *Mills* says, that the lands he holds are in the tithing of *Dorkingfield*, and that it is *extra-parochial*; that no tithes are payable for pease sown by broad cast, and not by *drilling*.

The defendant *James Mills* admitted, that he occupied lands in the tithing of *Dorkingfield*; and insisted, that the said tithing was *extra-parochial* (a); and he set forth his titheable matters; and said, that in 1793 he had cut upon part of his lands some pease, and carried away the same without setting out the tithe thereof; for that the pease were sown by *drilling*, and not by *broadcast*, and that it had been the custom of the neighbouring parishes to consider pease when sown in a broad cast as

(a) In the case of *Jennings v. Christmalls*, which came before the court on the sixth of February 1859, the plaintiffs, as lessees of the impropriate rectory of *Frensham*, in *Surry*, claimed by their bill the tithes of a farm called *Dorkingfield Place*, in *Dorkingfield*, in the said parish, particularly the tithes of sheep, cows, and calves. The defendant admitted, that he had had the titheable matters mentioned in the bill on the said farm; but he denied, that *Dorkingfield Place* was in the parish of *Frensham*; and said, that it had formerly belonged to the dissolved abbey of *Waverley*, in *Surry*; that there was a custom in the manor of *Dorkingfield*, that every customary tenant of the farm called *Dorkingfield Place* had held the same discharged of any other tithes to any other person whatsoever, on paying the tithes of corn, grain, and hay to the

lord of the said manor. The plaintiffs replied; the defendants rejoined; and witnesses were examined on both sides; and upon reading several depositions in the cause, and on full debate; the Court directed an issue to try, "Whether the tithes of the said farm were of right due and payable to the impropriator of *Frensham* or not," and it was tried accordingly; but by a mistake of the issue, the plaintiffs were forced to be nonsuited—a new trial was granted, and the issue amended on paying taxed costs. The amended issue was, "Whether any small tithes arising out of the farm called *Dorkingfield Place*, are due and payable to the farmers of the impropriate rectory of *Frensham*." But it does not appear whether this issue was tried, or what further proceedings were had in the cause.

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DURING THE REIGN OF GEORGE THE THIRD.

a great tithe, and when in drill as a small tithe, and that therefore the plaintiff was not entitled to the tithe thereof.

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of
P,

The defendants *Fish, De Burgh, and Eliz. Bishop*, admitted the lease as stated in the bill; and, referring thereto, said, that it was made to them, and their names inserted therein as lessees by the plaintiff, but that they were only trustees for them; and, submitting their interest to the Court, said, that they were ready to act as the Court should direct.

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as trust
plaintif

The plaintiff replied; the defendants rejoined; and witnesses were examined on the part of the plaintiff and the defendants *Richard Paine, John Yalden, and James Mills*; and the cause came on to be heard the fifth day of *February 1798*; when upon hearing counsel several days for all parties; and reading the following evidence for the plaintiff, viz. a lease, dated the sixth of *April 1791*, with *livery of seisin* indorsed thereon, and made between *John Carver* the archdeacon of *Surry* of the first part, the defendants *Fish, De Burgh, and Elizabeth Bishop*, widow, the plaintiff of the second part, *Lord Stawell* and others of the third part, and *Gabriel Jabaurdin*, clerk, of the fourth part; a letter from the defendant *Richard Paine* to the plaintiff, dated the ninth of *January 1793*; the deposition of *Richard Venner* to the eleventh interrogatory; several entries from the register book of *Frensbam* parish in the years 1721, 1722, 1723, 1726, 1768, 1778, 1780, and 1781; an order of this court, dated the thirty-first day of *January 1798*, for reading the following exhibits, viz. the seal roll belonging to *Frensbam Church*; *Frensbam Church* rate, made the nineteenth day of *April*, for part of the years 1762 and 1763; various depositions in the cause; and reading the following evidence for the defendants *Paine, Yalden, and Mills*, viz. A notice signed *Thomas Mantell*, directed to *Richard Paine*, dated the twenty-fourth of *March 1791*; three receipts for 1791, 1792, and 1793, signed by *Thomas Mantell*; the depositions of several witnesses taken in the cause; *Dorkingfield* poor book in 1707; the particulars of the rectory; and hearing the reply, the cause was ordered, on the third of *May 1798*, to stand over for judgment; and on the tenth of the same month;

The c
heard.

SIR ARCHIBALD MACDONALD, KNIGHT, *Lord Chief Baron*, delivered the same accordingly; and ordered the deputy to take an account of what was due from the defendants *Richard Paine* and *John Yalden* of the tithes of all the barren cows, horses, oxen, heifers, sheep, and other unprofitable cattle agist-ed by them or either of them on their said farms and lands; an account of the wood cut by the defendants in their hedge rows from the tenth day of *October 1791* to the time of the report; an account of the coppice wood, underwood, and other wood cut in the said defendant's coppices and elsewhere, except in hedges,

MANTELL
vs
PAINÉ.

not used for fuel or purposes of husbandry; an account of the defendant *Richard Paine's* wheat and milk as prayed by the bill; and an account of the defendant *James Mill's* pease, with costs.

The deputy ordered to enquire whether *Yalden* had sufficient fodder for his cattle, exclusive of the artificial grass.

How it was consumed.

Whether the made of pease had been fairly made up and set out?

Whether the fir trees were removed before the bill was filed.

Issues directed to try whether

Dorking field is extra parochial;

and whether there is such a *modus* as stated respecting pigs.

THE COURT further ordered the deputy to enquire whether *John Yalden* had sufficient fodder to support his cattle used in husbandry without the *green fodder* in the pleadings mentioned, and whether any part thereof was consumed by any other, and what description of cattle, and whether he had duly set out his tithe of pease in the year 1793, in wads of a proper size; and whether the said tithe wads were so separated from the other nine parts, as that the said plaintiff might take away the said tithe wads with ease and convenience, and without interfering with the said defendant's nine-tenths thereof; and how and in what manner the said defendant did previously to and hath since the said year 1793 set out his tithe of pease? And whether *Richard Paine's* fir plants were drawn before or after the day on which the bill was filed?

THE COURT further ordered a trial at law on the two following issues:

FIRST, "Whether the tithing of *Dorking field*, or any part thereof, is or is not in the parish of *Frensbam*."

SECONDLY, "Whether, from time whereof the memory of man is not to the contrary, there hath been a custom within the said chapelries or parsonages (as well as in several neighbouring parishes or districts), that every occupier of lands or tenements within the same having any pigs farrowed within the same to the number of seven or upwards, and not exceeding ten in number, should render and pay to the owner or proprietor of the tithes of the said chapelries or parsonages, or his lessee or farmer, or lessees or farmers, one of such pigs for or in lieu of the tithes of such number of pigs for that year, and that each and every such occupier should not render or pay any satisfaction in respect of the tithes of his pigs being under seven in number in any one year."

The judge to be at liberty to indorse any thing special; with the usual directions.

The bill as to agistment tithes of barren cattle dismissed.

Further directions reserved.

THE COURT further ordered so much of the bill as prayed an account of the tithe of agistment of oxen against *Richard Paine* and *John Yalden* to be dismissed with costs; and the consideration of costs, and all further directions to be reserved till after the return of the *posita* and the deputy's report.

WAYETT *against* HEALEY.TRIN. TERM,
38. GEO. 3.*Lincolnshire, 13th June 1798.*

THE vicar of *Pinchbeck*, in the county of *Lincoln*, claimed, by an endowment in the year 1258, all tithes, both great and small, in kind, arising in the parish, except the tithes of corn, grain, flax, wool, lambs, hay, and the *modus*es of fourpence an acre for the lands lying on the east side of *the Fen Dyke*, and threepence an acre for the lands lying on the west side of *the Fen Dyke*, payable yearly at *Martinmas* by the occupiers of such lands, being inhabitants of the parish, in lieu of tithe hay, and also except the tithes of foals, calves, and milk, in lieu of which *modus*es had been immemorially paid yearly at *Easter*, that is to say, for every foal within the number of seven, one penny; if seven, three shillings and one penny; if eight, three shillings and twopence; if nine, three shillings and threepence; if ten, three shillings and fourpence; and so on if more: and for every calf calved alive within the number of seven, one halfpenny; if eight, one shilling and sevenpence; if nine, one shilling and sevenpence halfpenny; if ten, one shilling and eightpence; and so on if more: and for every cow that gives milk, twopence, except it be a heifer of her first calf, and then only one penny. The bill then stated, that there are very extensive commons, commonable lands, and waste grounds, containing fifteen thousand acres, in and upon which all the occupiers of land in the parish of *Pinchbeck* and the adjacent parishes of *Spalding* and *Corbit* had and exercised promiscuously a right of common for all cattle without stint throughout the whole of the year: that there are also within the said parish divers inclosed lands summer eaten, and also inclosed lands on which turnips, cole, and cabbages were grown, on which sheep and other cattle were fed and depastured; that the defendants occupied farms in the said vicarage, and had hay, wood, underwood, willows, reeds, hens, ducks, eggs, young poultry, honey, fruit, garden stuff, and divers other titheable matters, the tithes of which they had refused to pay, or to make any satisfaction for, except the aforesaid *modus*es in lieu of the tithes of foals, calves, and milk, and the tithes in kind of pigs, young turkeys, geese, and eggs. The bill then further charged, that the defendants had respectively fed, not only on the commons and commonable lands, but also on the lands in their occupation within the vicarage, a considerable number of oxen, cows, saddle horses, horses not used for the plough, sheep, lambs, and other barren and unprofitable cattle, the agistment tithes of which they had refused to pay. The bill then stated, that the master, fellows, and scholars of *Emmanuel College*, in the university of *Cambridge*, who were the impropriators of the vicarage, claimed to be entitled to some particular species of tithes arising in the vicarage and

The vicar of *Pinchbeck*, in *Lincolnshire*, claims 4d. an acre for lands lying on the east side, and 3d. an acre for lands lying on the west side of *the Old Fen Dyke*, in lieu of tithe hay; certain *modus*es in lieu of the tithes of calves, foals, and milk; and the tithes of all other titheable matters, except of corn, grain, flax, wool, and lambs, in kind,

which had arisen on the waste grounds on which the occupiers in the parish had a right of common without stint at all times in the year; on the inclosed summer eaten lands; and on the inclosed lands sowed with turnips, cole, and cabbages, for the feeding of sheep, particularly the tithes of wood, underwood, willows, reeds, ducks, honey, fruit, vegetables, saddle horses, and other barren cattle, and the *modus*es in lieu of tithe hay.

WAYETT
against
HEALEY.

parish, in opposition to the right of the plaintiff. The bill then prayed an account of all the said titheable matters, except corn, grain, hay, flax, wool, lambs, calves, colts, pigs, young turkies, and geese, since the plaintiff's institution in July 1792, for which no such *modus*es as aforesaid were payable, the value of the tithes thereof; also an account of the money due from the defendants respectively for the customary payments in lieu of the tithe of hay arising within such particular parts as aforesaid, and for the agistment of cattle, and payment of what should appear to be due thereon.

The defendants say, that the plaintiff is vicar; that he is entitled, under the endowment, to the tenth sheaf of fensle and hemp, but not to the tithes of hemp seed; to the tithes of rape seed, mustard seed, onions, pigs, geese, and turkies, in kind; to the *modus*es in lieu of tithe hay, foals, calves, and milk; to 2d. for an Easter offering; 10s. a windmill; 10s. a mercer's shop; 4d. a loom; 4d. an alehouse; and 8d. a fire-hearth; in lieu of all other tithes; that they enjoyed the right of common as stated in the bill; that there were in the parish the other inclosed lands; but that they had no lands, excepting on the east and west sides of the Old Fen Dyke; and they insisted, that they ought only to account for the tithes of cole seed, mustard seed, onions, pigs, geese, and turkies, the said *modus*es being payable in lieu of all other tithes;

The defendant *W. Healey* and others admitted, that the plaintiff was vicar of the parish; that the vicarage was endowed, as stated in the bill; that it appeared from a terrier in the registry of the Bishop of Lincoln, that the vicar of *Pinebeck* was entitled to the tenth sheave or glean of fensle and hemp when it was pulled up and bound and set upon the ground, but not to the tithe of hemp seed; that he was also entitled to the tithe of cole seed or rape seed and mustard seed; to the tithes of onions, pigs, geese, and turkies, in kind; and to the *modus*es as stated in the bill, in lieu of the tithe of hay arising from the lands therein described; that the *modus*es in lieu of the tithes of foals, calves, and milk, had been immemorially payable yearly at *Easter*; that he was entitled to other payments described in the said terriers as rate tithes, NAMELY, for every communicant of sixteen years of age, twopence; for every windmill in the parish, ten shillings; for every mercer's shop therein, ten shillings; for every loom that every webster had therein, fourpence; for every alehouse-keeper that sold ale, fourpence for every sign; and twopence halfpenny by every parishioner for one fire-hearth; and they insisted, that the said several payments were by the said terrier expressly declared to be in lieu of all other tithes. They also admitted, that there were very extensive commons and commonable lands, containing fifteen thousand acres, upon which the occupiers of lands in the parish had a right of common; and that the occupiers of lands in the adjoining parishes of *Spalding* and *Cowbit* had promiscuously exercised a right of common without stint throughout the whole of the year; They also admitted, that there were in the parish divers inclosed lands summer eaten, and also divers other inclosed lands, on which turnips, cole, and cabbages were grown, and sheep and other cattle depastured thereon; but they denied, that they occupied, or had ever occupied, any farms or lands within the vicarage which were not lying either on the east or west sides of the Old Fen Dyke, for the hay arising on which the *modus*es stated in the bill had been immemorially payable; and they set forth their titheable matters; and insisted, that they ought not to be decreed to account, except for cole seed, mustard seed, onions, pigs, geese, and turkies, the said *modus*es being in lieu of all tithe, the said *modus*es being payable in lieu of all other tithes;

except of hemp, cole seed, mustard seed, onions, pigs, and turkeys. They also said, that they had not, except as after-mentioned, any lands in the parish which were exempt from the payment of the said *moduses*; that they did not know that any lands were exempt, except thirty-six acres of pasture and arable lands, called *Laith Yards*, which had immemorially been free from the payment of all tithes, and also except two certain farms being part of the commonable lands in *Pinchbeck North Fen*, which were granted by an act of parliament passed in the year 1765 to certain commissioners therein named; and that the said farms were occupied by the defendants *W. Hooley* and *J. Carter*, and which farms were by the said act exempted from the payment of tithes. They denied, that they, or any of them, had, at any time before the year 1792, delivered any tithes in kind, or made any satisfaction for the tithes of the lands by them respectively occupied in the parish, other than such compositions as before set forth; and they submitted, whether the plaintiff was entitled to the tithes of agistment for any of the animals so by them kept and depastured. They said, that they had sundry times removed the several animals which they had kept upon the *Commonable Lands* into the *Inclosed Lands* by them occupied, and had also turned the animals by them fed upon the *Inclosed Lands* into the *Commonable Lands* as it suited them.

The master, fellows, and scholars of *Emmanuel College* admitted, that the plaintiff was vicar of *Pinchbeck*; and said, that they were rectors thereof, and as such claimed to be entitled to all the tithes with which the vicar was not endowed, except the tithes of hemp and flax, which did not belong either to them or to the vicar.

did not belong to either of them.

The plaintiff replied; the defendants rejoined; and upon hearing counsel on both sides; and reading, on behalf of the plaintiff, an endowment of the vicarage, dated the tenth day of *April*, in the year 1274, and brought from the registry of the *Bishop of Lincoln*, at *Lincoln*; and reading the defendant's answer; and also reading, on behalf of the defendants, an indenture, dated the fourth day of *February*, in the year 1712; a terrier signed by the churchwardens and several of the inhabitants of *Pinchbeck* without a date; and upon full debate;

THE COURT ordered the deputy to take an account of the tithe of hay, wood, underwood, willows, reeds, milk, and all other the titheable matters and things (except corn, grain, and hay, growing on the lands lying on the east side and west sides of the *Old Fen Dyke*, wool, lambs, calves, colts, pigs, young turkeys, and young geese), which the said defendants the occupiers had respectively had on any of their lands in the said vicarage or parish of *Pinchbeck* since the plaintiff's institution into the said vicarage

WAYBITE
against
HEALEY,

that the thirty-six acres called *Laith Yards* were tithe free;

that two farms part of the commonable lands in *Pinchbeck North Fen* were also discharged from tithes;

and that the vicar was not entitled to the agistment tithe of the cattle fed sometimes on the *Common*, and sometimes on the *Inclosed Lands*.

The impropriators of the parish claimed all tithes of which the vicar was not endowed; and said, that the tithes of hemp and flax

The cause heard.

The Court decrees the defendants to pay the tithes of wood, underwood, willows, reeds, and other matters, except wool, lambs, calves, colts, pigs, turkeys, and geese, in kind;

WAYETT
against
HIALBY.

the *moduses* of
4d. an acre and
3d. an acre in
lieu of the tithe,
hay on the east
and west sides of
the Old Fen Dyke;
and the agistment
tithe of the bar-
ren cattle depas-
tured on the Com-
mons and the In-
closed Lands;
but without
costs.

vicarage in the month of *July* 1792, and of the value of the tithes thereof; and also an account of the money due from the defendants respectively to the plaintiff for the *moduses* of fourpence an acre for the lands lying on the east side of *the Old Fen Dyke*, and threepence an acre for the lands lying on the west side of *the Old Fen Dyke*, payable yearly at *Martinmas* by the occupiers of such lands being inhabitants or parishioners, for and in lieu and satisfaction of the tithe of hay arising from the said lands; and also an account of the tithe of agistment of all dry, barren, and unprofitable cattle, kept, fed, and depastured on the commons and commonable lands aforesaid, and the inclosed lands occupied by the defendants respectively, and the value thereof; but that no costs should be paid by either party; and that all further directions should be reserved until after the coming-in of the report.

THE COURT FULL.

TRIN. TERM,
38. GEO. 3.

PYNDAR against WITHERS.

Worcestershire, 25th June 1798.

The rector of
Madresfield, in
Worcestershire,
claims the great
and small tithes
of the parish in
kind.

THE rector of *Madresfield*, in the county of *Worcester*, claimed, of common right, all the tithes of corn, hay, grain, and other great and predial tithes, and also all small tithes whatsoever arising therein; and after stating, that the defendant *Withers* in his own right and as occupier, and the other defendants as tenants, held divers lands in the parish, on which they had had corn, grain, hay, and other titheable matters, charged, that they had refused to pay the same under pretence of an exemption or *modus*; and averred, that the lands occupied by them were not exempted, or in any way privileged from the payment of tithes in kind; that tithes in kind had for many years, and in many instances, been actually paid to some one or more of the former rectors of the parish for the said lands; that no part of the lands so occupied by them respectively constituted any part of *Garlford Grange*, or of any other farm out of the parish of *Madresfield*; that the whole and every part of *Garlford Grange* lay wholly in the parish of *Malvern*, or in some other parish, and not in the parish of *Madresfield*; and that the defendants lands, to a considerable extent, lay within the said parish or the titheable places thereof; that they were well able to ascertain the value and quantity of tithes which ought to have been paid by them for the same; that they ought to have discovered and set forth the true abuttals and boundaries of their respective farms, and particularly of such part of *Garlford Grange* (if any) as lay within the said parish of *Madresfield*, and constituted any part of their respective farms, but that they had refused so to do. The bill therefore prayed an account and payment of the said tithes.

The

as such, entitled to the great and small tithes arising therein, or to some compensation in lieu thereof; but denied that he was entitled to all the said tithes in kind within the whole of the parish.

small tithes, but not from all the lands

The defendant admit, that the plaintiff is rector of *Madresfield*, and entitled to the great and small tithes in the parish;

The defendant *Withers* said, that in the year 1793 he held in the parish the land described in his answer in fee simple, and no other; that in the said year he grew on part thereof a quantity of hay; that the said hay was eaten and consumed by his stock of cattle and sheep; that the residue of his land was depastured with his coach-horses, hackney horses, and cart horses, colts, cows, calves, and sheep, but that not having kept any account of the particulars of each sort of such cattle, he occupying other land situate in the parish of *Great Malvern*, and adjoining to the land in his occupation in *Madresfield*, and the same cattle oftentimes necessarily depasturing upon land in both parishes the same day, and the messuage or farm-house in his occupation being situated in both the said parishes, he could not set forth a true account of the stock and other titheable matters kept and had by him.

that they are seized in fee of certain lands therein; that on part thereof hay had been made and eaten by the stock thereon; that the residue had been depastured with coach horses, hackney horses, cart horses, &c. &c. but that he could not set forth the particulars;

The other defendants said, they rented land of *Withers* and of other persons, the particulars of which they set forth; and spoke nearly to the same effect:

that part of the lands were let;

The defendant *Withers* further said, that on behalf of himself and his tenants he had directed the sum of ten guineas to be tendered to the plaintiff as a compensation for all tithes, both great and small, which, in the said year, had become due from the said lands, and all costs; that the said tender was made, and he had refused to accept of it. He further said, that the prior and monks of the monastery of *Great Malvern*, in the county of *Worcester*, were, at the time of the dissolution thereof, seized in fee of the manor of *Gartford*, in the said county, with all the lands and tithes thereon; that on the suppression of the monastery, the same became vested in the crown; that they were afterwards granted by *Henry the Eighth* or his successors to sundry persons; that he held the same under the said grants; that the manor of *Gartford* was situated in both the parishes of *Great Malvern* and *Madresfield*; that the manor comprised several messuages, lands, and tenements, belonging to the defendant and several other persons; that among the said lands there was a place called *Gartford Grange*; that the said grange was situated in both the said parishes; that there was not any burial ground in the parish of *Madresfield*; that persons dying in that parish were buried in the chapel of *Saint Leonard*, in *Great Malvern*, or the consecrated ground belonging thereto; that he

that he had tendered sol. 10s. and costs in lieu of the tithes of all the titheable lands;

that part of his estate comprised the manor of *Gartford*; that the said manor was parcel of the priory of *Great Malvern*; that on the dissolution of the priory it came to the crown tithe free; and that *Henry the Eighth* granted it to the persons under whom he claims;

that the manor lay both in *Great Malvern* and in both parishes;

Madresfield; that in the manor is a place called *Gartford Grange*, situated in

could

PRIMA
against
WITHERS.
 that the said
 grange had been
 immemorially
 exempt from
 tithes;
 that *Garlford*
Grange divided
 the parishes;

that the names
 of the lands had
 been so altered,
 it could not be
 distinguished of
 what the grange
 consisted,
 or what parts
 lay in the one
 parish, and
 what in the o-
 ther;

but that diffe-
 rent parts of it
 certainly lay in
 each parish;

that he had paid
 9s. 9d. a-year
 for the tithes of
 such parts of his
 estate as were
 titheable;

that the tithes
 had been con-
 veyed to the
 owners of the
 estate.

could not set forth the boundaries of the parish of *Madresfield*; but that he believed, that all or the greater part of the lands within the said manor had been immemorially, and were then, exempt and discharged of and from the payment of tithes of any titheable matters, by prescriptive or other lawful ways or means. He further said, that he believed that the boundary line of part of the parish of *Madresfield* passed through THE HALL of the messuage in his occupation; and that the said messuage was within the manor of *Garlford*.

All the defendants further said, that the present names of the greater part of the lands, tenements, or hereditaments occupied by them, and of the other lands in the parish, differed so widely from the names by which such lands were formerly known, that it was impossible to trace out such lands particularly, or to trace out what particular lands *Garlford Grange* did formerly or then consist of; and therefore they could not set forth what part or parts of such lands or tenements occupied by them were or was part of *Garlford Grange*, nor could they describe, specify, or ascertain any of such part or parts by proper and accurate abutments and boundaries, nor in what particular part of the said parish of *Madresfield* the estate called *Garlford Grange* lay; but that it appeared from the receipts of the receiver of the king's rents for the county of *Worcester*, and from documents belonging to the commissioners for sale of such rents, that an estate called *Garlford Grange* did exist, and that part thereof was situated within the parish of *Madresfield*, and another part in the parish of *Great Malvern*.

The defendant *Withers* further said, that from the time he purchased the said lands and tenements occupied by him and the other defendants until the year 1788, he had, by himself, his agents, or tenants, paid the yearly sum of *five pounds and nine shillings* only for the tithes of such of the said lands as he conceived were liable to pay tithes; and that the said sum had been paid for near thirty years before that time.

The defendants the tenants further said, that if the lands occupied by them, or some part thereof, were or was not exempt from the payment of tithes, the tithes thereof had been duly conveyed and granted to those under whom the defendant *Withers* claimed such lands; that such tithes belonged to him or to his lessees or farmers; that the tithes of the manor of *Garlford* had been duly granted to the person or persons under whom the said defendant *Withers* derived title to the premises; that the lands occupied by them, or some parts of such lands, were part of the manor of *Garlford*, though they could not accurately set forth what part of such lands were part of the said manor; but the defendant *Withers* said, that he had been informed, that the vicar of *Great Malvern* had often read THE GOSPEL, at the time of

HALL of his said messuage, part of which was situated in the parish of *Madresfield*, and part in the parish of *Great Malvern*.

against
WITNESS.

The plaintiff replied ; the defendants rejoined ; witnesses were examined on both sides ; their depositions duly published ; and the cause heard ; when on reading, on behalf of the plaintiff, an office copy of a terrier of the parish of *Madresfield*, dated A. D. 1585 ; three receipts for tithes for the years 1760, 1761, and 1762, given by the *Reverend Corsfield Clare*, the then vicar of the parish ; four other receipts, being receipts for tithes for the years 1773, 1776, 1777, and 1778 ; the several proofs taken in the cause ; and on full debate of the matter ;

The cause
heard.

THE COURT ordered ABEL MOYSEY, Esq. the Deputy Remembrancer, to take an account of what was due from the said defendants for the tithes of corn, grain, hay, and the other titheable matters demanded by the bill which had arisen on their lands in the parish of *Madresfield* and the titheable places thereof, and to tax the plaintiff his costs ; and the cause to be further heard on the coming-in of the report.

The tithes of all
the titheable
matters which
had arisen in the
parish of *Madresfield* decreed
with costs.

Int. A. M.

A. MACDONALD,
B. HOTHAM.
R. PERRY.
A. THOMSON.

Wood for the Plaintiff.

A COL.

COLLECTION
OF
DECREES
BY
THE COURT OF EXCHEQUER
IN
TITHE-CAUSES,
FROM
THE REIGN OF WILLIAM THE THIRD
TO
THE PRESENT TIME
NOT DRAWN UP.

MICH. TERM,
1. Q. ANNE.

No. 193.

The tithes of
wood, without
prejudice to the
modus, decreed.

WITHERS *against* BOWMAN.

Suffex, 8th December 1702.

THE plaintiff waived his claim of tithe wood.—THE COURT decreed the defendant to pay thirty shillings for the year till *Christmas* 1700; the plaintiff to have costs till answer; the defendants to have costs after, but *without prejudice* to the *modus*.

HILARY TERM
1. Q. ANNE.

No. 104.

Tithes of *Down Cops*, *Harman Cops*, and *the Decoy*, in the parish of *Poling*, in *Suffex*, decreed, and issues directed as to *Newhouse Farm*.

DENHAM *against* SHELLEY; *et à Contra*.

Suffex, 8th February 1702.

THE bill was brought for the tithes of the parish of *Poling*, in *Suffex*.—THE COURT decreed an account for the tithe of *the Down Cops* and *the Harman Cops*; and directed issues to try: FIRST, "Whether any and what part of the lands of *Newhouse Farm* lie in the parish of *Poling*."—SECONDLY, "Whether there be a *modus* payable for all the said farm to the minister."—And, THIRDLY, "Whether any part of the farm lies in the parish of *Poling*, and what are the tithes thereof."—THE COURT also decreed an account for the lands lying in *the Decoy*.

FOSTER

FOSTER against TONGUE.

Durham, 13th July 1704.

THE COURT decreed, that the *modus* be established as in the answer; and that the defendant should have his costs.

TRIN. TERM,
2. Q. ANNE.

No. 10.

Modus estab-
lished.

WATSON against LINDSALL.

Cambridgeshire, 20th April 1719.

EASTER TERM
5. GEO. 1.

No. 21.

UPON reading several depositions of witnesses taken in the cause, **THE COURT** declared, that there was no proof of the custom as to tithe milk; and decreed an account for tithe milk and other tithes (except *Easter* offerings) claimed by the bill, making all just allowances.

Tithe milk de-
creed.

TAYLOR against CROMPTON.

Shropshire, 5th December 1721.

MICH. TERM,
8. GEO. 1.

No. 31.

THE bill was brought by the vicar of *Madeley*, in *Shropshire*. The defendant's counsel objected against the bill; and on hearing counsel, the bill was retained, and directed the parties to go to law.

Bill retained.

MANSELL against CLAVELL.

Gloucestershire, 17th July 1723.

TRIN. TERM,
9. GEO. 1.

No. 21.

AN order, dated the second of *July* 1722; a record of the twenty-second year of *Edward the First*; a surrender of the fourteenth of *March*, in the thirtieth year of *Henry the Eighth*; the bailiffs accounts; a lease, the twentieth of *December*, in the twenty-sixth year of *Henry the Eighth*; the depositions of several witnesses taken in the cause; and an indenture, dated the twenty-first of *November* 1662, were read; and an issue was directed to try, "Whether the lands are discharged of tithes, or not."

Issue directed;

BAYLEY against CORNES.

Shropshire, 18th June 1724.

TRIN. TERM,
10. GEO. 1.

No. 2.

THE bill was brought for the tithes of the parish of *Bridgnorth*, in *Shropshire*; and upon hearing counsel; and reading several depositions of witnesses taken in the cause; the bill was dismissed as to the vicar with forty shillings costs; and an issue directed to try, "Whether the plaintiff is entitled to any and what part of the great tithes arising on any and what part of the defendant's grounds."

Issue directed.

GLANVILL

HILARY TERM
22. GEO. 2.

GLANVILL *against* TRELAWNY.

Cornwall, 23d February 1724.

The tithes, except of firewood and garden stuff, of *Saint Germain's*, decreed.

THE bill was brought for the tithes of the rectory of *Saint Germain's*, in *Cornwall*; and upon hearing counsel for all parties; and reading the deposition of *Robert Willis*; THE COURT decreed an account of all tithes, excepting the hearth penny and the garden penny.

TRIN. TERM,
22. GEO. 2.

COLEMAN *against* BARKER.

Norfolk, 7th July 1726.

No. 95.
Agistment tithe of sheep between shearing day and shearing day decreed.

THE bill was brought for the tithes of the parish of *Thompson*, in *Norfolk*; and upon hearing counsel on both sides; and reading the decree, dated the tenth of *February*, in the first year of *William and Mary*, in the cause of *Dummer v. Wingfield*; THE COURT decreed an account for the agistment tithe of the sheep sold before shearing-time, with moderate costs (a).

(a) The Court agreed, that it was a new increase, and that they could not distinguish it from the case of *Dummer v. Wingfield*; and that the distinctions laid

down in the case of *Eastmond v. Sandys*, Shower's Parliamentary Cases, 192. was good.

TRIN. TERM,
2. GEO. 2.

SWEETAPPLE *against* THE DUKE OF KINGSTON.

Nottinghamshire, 1st July 1727.

No. 89.
Bill for tithes, glebe, and right of common of *Fledborough* retained for a year.

THE plaintiff was rector of *Fledborough*, in the county of *Nottingham*, and filed his bill, FIRST, for tithes; SECONDLY, for glebe; and, THIRDLY, for right of common; and upon hearing counsel on both sides, the bill was retained for a year, and the plaintiff permitted to assert his right to the glebe land and right of common in the bill mentioned.

HILARY TERM
1. GEO. 2.

WOOLFERSTON *against* MAINWARING.

Staffordshire, 5th February 1727.

No. 61.
A modus of nine cart loads of logwood, in lieu of tithe, found and decreed.

THE bill was brought for the tithes of the rectory of *Drayton Bassett*, in the county of *Stafford*; and upon hearing counsel; and reading the depositions of several witnesses taken in the cause; and receipts, dated the twenty-sixth of *August* 1723 and the twenty-eighth of *March* 1721; it was referred to a trial at law to try the moduses as alledged in the answer, viz. that the lord of the manor, time out of mind, for himself and his tenants, on *Ascension Day*, gave and delivered to the rectors nine cart loads of logwood, in lieu of tithes. Pursuant to which order a trial was had;

had ; and on full evidence given on both sides, the jury found the several *modus*es as alledged in the answer, and gave a verdict for them accordingly ; and on the fifth of *February* 1729, upon reading the said recited order and *postea*, THE COURT ordered the bill to be dismissed, with costs both at law and in equity.

Woolsterton
against
Mainwaring

BIRCH against STONE.

Derbyshire, 13th July 1731.

TRIN. TERM,
5. GEO. 2.
No. 6.

THE bill was brought for the tithes of the parish of *Barton Blount*, in the county of *Derby*. Three books were read of *John Tatbam*, deceased ; and the depositions of several witnesses taken in this cause for the defendant ; and an issue was directed to try the *modus*es as laid in the answer (except what related to the *Park*.)

Issues directed
to try *modus*es in
Barton Blount,
excepting as to
the land called
the *Park*.

HOWLAND against BATE.

Kent, 27th January 1731.

MILNY TERM
5. GEO. 2.

THE bill was brought for the tithes of the parish of *Warrborne*, in the county of *Kent*. The *postea* in a former cause between the present defendant and the plaintiffs was read ; and the *modus*es were established without costs on either side.

*Modus*es esta-
blished.

THE BISHOP OF HEREFORD against COOPER ;

AND

THE DUKE OF BRIDGWATER against THE BISHOP OF HEREFORD.

Shropshire, 11th May 1732.

EASTER TERM
5. GEO. 2.

No. 6.

THE bill was brought for the tithes of the parish of *Whitchurch*, in *Shropshire*. The Duke's counsel objected to the plaintiff's counsel arguing the legality of the *modus*es now, without admitting the facts of them. The Duke's bill was read, and the Bishop's answer ; and an instrument under the hand and seal of *Dr. Matthew Fowler*, rector of *Whitchurch*, in *Salop*, dated the twentieth of *July* 1683 ; the depositions of *John Wollfall* and *Ambrose Nickson* on the cross examination ; and the depositions of several witnesses taken in the cause ; the tender of the *modus*es was admitted : exhibits, entitled "*Black Park Tithe Hay Money*," and as to new *Woodhouses* ; and a letter beginning with, "Sir, The Doctor desires, &c." ending with the figures "19s. 6d. ;" another, intituled, *Black Park Tithe Hay Money*, signed *M. Fowler* ; and on the fifteenth of *June* 1752, upon hearing counsel further in the cause ; and reading the depositions of several witnesses ; the answer of the defendant *Payne* to the original bill ; the

The agistment
tithes and tithes
of potatoes of
the parish of
Whitchurch de-
creed ; and is-
sues directed to
try the *modus*es.

OF HEREFORD
against
COOPER; AND
THE DUKE OF
BRIDGWATER
against
THE BISHOP OF
HEREFORD.

First, between the Bishop of Hereford and Lorton and others; the defendant's answer to the said bill; and the decree, dated the tenth of February 1723; THE COURT ordered an account for the agistment of barren and unprofitable cattle, with the usual directions, and the tithe of potatoes to be paid as submitted to in the answer; and directed an issue to try the *modus* as alledged in the cross bill by a special jury; the plaintiff in the cross bill to be plaintiff at law; and the issues to be settled by the deputy, if the parties differ, with the usual directions.—THE COURT further ordered Dr. Fowler's book wherein the instrument is entered, in the pleadings mentioned, to be produced by the Bishop at the trial; and the costs to be reserved.

EASTER TERM
7. GEO. 3.
No. 20.

MILLINGTON against KILLEGREW.

Cornwall, 31st May 1733.

The tithes of the
parish of Falmouth, in Cornwall, decreed.

THE plaintiff was rector of the parish of *Falmouth*, in *Cornwall*. On reading a copy of an act of parliament, 16. Car. 2. for making the church erected at *Falmouth* a parish-church; a rate or assessment, dated the eleventh of February 1729, made at the Guildhall at *Falmouth* by P. Webber, mayor, &c.; THE COURT decreed an account generally as to small tithes against *Killegrew* and *Uren* with costs; but dismissed the bill as to *Cater* with costs.

HILARY TERM
11. GEO. 3.
No. 14.

COLLINS against DIGGINS.

Staffordshire, 22d February 1737.

An issue directed
to try a *modus*.

THE bill was brought for the tithes of the parish of *Saint Bartholomew*, near the city of *Chichester*. The defendant's counsel objected to the *modus* as laid in the bill. An issue was directed to try the validity of the *modus* as laid in the bill, with the usual directions, and liberty to indorse the *posse*.

EASTER TERM
17. GEO. 3.
No. 69.

MOTTERSHEAD against ASHETON.

Staffordshire, 21st April 1743.

An issue directed
to try a *modus*.

THE plaintiff was vicar of the vicarage and parish-church of *Madeley*, in the county of *Stafford*; and an issue was directed to try the *modus* of six shillings and eightpence as laid in the answer, with the usual directions.

WOLFEISTON

WOLFERSTON *against* BRAGINTON.*Devonshire, 24th June 1746.*TRIN. TERM,
19. GRU. 2.
No. 192.Certain *modus* in the parish of *Hartland*, in *Devonshire*, decreed.

THE bill was for the tithes of the parish of *Hartland*, in *Devonshire*. Counsel were heard for all parties; and several depositions were read; and also receipts, signed by the plaintiff, dated the fifth of *March* 1738, the thirty-first of *March* 1739, and the ninth of *April* 1742. THE COURT decreed the bill to be dismissed as to the several matters waived by the replication, with costs to that time, *viz.* milk, calves, lambs, and depasturing of sheep, the plaintiff admitting the customary payments, as also *Easter* offerings, colts, corn, and grain, except the *rakings* of barley and oats; AND ALSO, that the bill be dismissed as to the demand of *rakings* without costs; the defendant to account for the *modus* insisted on by the answer for calves, lambs, and milk, *viz.* for every cow kept and milked, one penny a-year; a calf, sixpence; depasturage of sheep, threepence; for every lamb fallen, threepence; and *Easter* offerings, threepence; and for pasturage of sheep according to the *modus* of threepence from *Lady Day* 1742; and for colts in kind from *Lady Day* 1742; and for tithe hay of all the estates in the defendant's occupation, except *Highford Tenement*, and for that according to the *modus* of ninepence from *Lady Day* 1742 to the time of filing the bill; ALSO to account for the wool of sheep and wool of lambs kept and shorn in the parish; and for agistment of barren and unprofitable cattle, ducks, apples, except *Highford*, *Easter* offerings, and coppice, underwood, and furze, for the time demanded by the bill. The accounts to be taken with just allowances and all usual directions, and with costs.

INGRAM *against* THEAKSTON.*Yorkshire, 16th June 1748.*TRIN. TERM;
21. GRU. 2.
No. 202.Bill dismissed as to the tithes of *Kirby Malzard*, in *Yorkshire*.

THE bill was brought for the tithes of the parish of *Kirby Malzard*, in the county of *York*; and upon reading several depositions taken in the cause; a copy of an endowment of the vicarage of *Kirby Malzard*, dated *April* 1278; the depositions of *Thomas Sutton*, *William Wrather*, *George Ripley*, *George Walton*, *Joseph Lambert*, and *Moses Jackson*, offered to be read, and refused; and reading a copy of the register of *Kirby Malzard* of the deaths of *Jonathan Wood*, senior, buried *January* the thirteenth 1737, and others; also the deposition of *George Thirkill* in the cause of *Save v. Lodge*; and also of *Jonathan Wood* on his cross examination, and on his examination for the said defendant in the said cause; and on the further hearing of counsel on the sixth of *July*, the bill was dismissed with costs, according to the course of the court, as to *the College*, and without costs as to the defendant *Theakston*.

Term. Term,
22. Geo. 2.
No. 104.

CARTHEW *against* EDWARDS.

Cornwall, 5th June 1749.

The tithes of
milk, lambs,
wool, and Easter
offerings, of the
parish of Saint
Mewan, in Corn-
wall, decreed.

THE bill was brought for the tithes of the parish of *Saint Mewan*, in *Cornwall*; and upon hearing counsel on both sides; and reading the depositions of several witnesses taken in the cause; and the answer, folio fifty-four; THE COURT declared, that the tithe wool of lambs was due to the plaintiff, and also *Easter* offerings of common right, at the rate of twopence a head for every person in the defendant's family of sixteen years and upwards, to be paid by the defendant; and decreed him to account with the plaintiff accordingly. THE COURT also declared, that the defendant ought to have milked the tenth meal of his cows in vessels of his own, at the place, and in the manner he milked the other nine meals; and that the plaintiff ought to have fetched it away in his own vessels; and it appearing, that the defendant poured the tithe milk into holes or pits made in the ground, THE COURT decreed, that the defendant do account for the same with the plaintiff. But the defendant offering to pay the plaintiff the sum of thirty-eight pounds in lieu of what might appear to be due on taking the account, and for his costs, and the plaintiff accepting thereof, the same was ordered accordingly.

EASTER TERM
25. Geo. 2.
No. 97.

RYDER *against* GOULD.

Hertfordshire, 15th June 1752.

The agistment
tithes of sheep
sold between
shearing day and
shearing day,
milk, calves,
garden stuff,
hens eggs, hay,
wool, lambs,
pigs, &c. of the
parish of Saint
Andrew, in Hert-
fordshire, de-
creed.

THE bill was brought for the tithes of the parish of *Saint Andrew*. THE COURT decreed, that the defendants do severally come to an account with the plaintiff, and pay and satisfy him for the value of the tithes of the herbage of sheep kept and depastured by them respectively in the said parish during the time mentioned in the bill from the time of their being shorn to the time they were sold and disposed of.—THE COURT further ordered the defendant *Gould* to account for the composition money for milk and calves for the year 1744, and for garden stuff and the eggs of hens for the time mentioned in the bill. THE COURT further ordered the deputy remembrancer to see what tender, if any, had been made by the defendant, and whether and at what period it was sufficient to answer the value of the tithes of garden stuff and hen eggs. THE COURT further ordered the bill to be dismissed as to all other matters against the said defendant without costs; and the said accounts to be taken without costs. THE COURT further ordered the bill to be dismissed, as against the defendant *Lister*, as to the demand of the tithes of hay, wool, lambs, eggs, turnips drawn, depasturage of cattle taken in at hire, young cattle bred and sold, pigs, and clover seed, without costs; and the defendant to account for the several other matters demanded by the

DURING THE REIGN OF GEORGE THE SECOND.

the bill, without costs; the deputy to see whether the defendant made any and what tender, and when, and whether it was sufficient to answer what shall be reported due for the value of such tithes.

582
122
RYDER
against
GOVERN.

JEFFEREY *against* HONEY.

Cornwall, 30th April 1752.

EASTER TERM
25. GEO. 2.
No. 152.

THE bill was brought for the tithes of the parish of *Linkinborne*, in *Cornwall*; and upon hearing counsel on both sides; and reading several depositions taken in the cause; THE COURT decreed the defendant to account for the tithes of agistment of barren and unprofitable cattle; and ordered the deputy to see whether any and what tender had been made; and the bill to be dismissed as to tithe hay and milk with costs, and as to the demand of tithe wood without costs.

Bill dismissed as to the tithes of hay, milk, and wood; and the tithes of agistment decreed.

PARKER *against* BAMPFYLDE; *et à Contra*.

Devonshire, 7th February 1757.

HILARY TERM
31. GEO. 2.
No. 133 & 176.

THE bill was brought for the tithes of the parish of *North Molton*, and to establish a *real composition* for tithe wood within the said parish; and, upon hearing counsel in both causes for all parties, an issue was directed, by consent, to try the *real composition* insisted on in the cross bill; the said issue to be tried by a special jury with a view; and costs and further directions to be reserved.

Issue directed to try a *real composition* as to tithe wood.

CHAPMAN *against* NETHERCOATE.

Northamptonshire, 21st November 1757.

MICH. TERM,
31. GEO. 2.
No. 64.

THE plaintiff was rector of the parish and parish-church of *Braybrooke*, in *Northamptonshire*; and on reading the following evidence for the defendants, viz. the depositions of several witnesses taken in the cause; a grant under THE GREAT SEAL, dated the twenty-sixth of *June*, in the sixth year of *Queen Elizabeth*, to *Sir Thomas Griffin* and *E. Griffin*, of the manor, farm, and grange of *Braybrooke*, late the possessions of the *abbey of Pipwell*; a lease from the abbot and convent of *Pipwell*, under the common seal, to *T. Griffin*, of the manor of *Braybrooke*, dated the twelfth of *October*, in the twenty-third year of *Henry the Eighth*; the roll of the ministers accounts from THE AUGMENTATION OFFICE relating to the manor of *Braybrooke*; an indenture between *Sir Ed. Griffin* and *Samuel Coles* of lands in *Braybrooke*, signed *Edward Griffin*, dated the twenty-third of *November 1649*; and on reading, on the twenty-fourth of the said *November*, the following evidence for the plaintiff, viz. the depositions of several witnesses taken in the cause; the answer of the defendant *Nethercoate*, folios

An issue directed to try, whether the lands, the tithes of which were demanded by the bill, were parcel of the possessions of the *abbey of Pipwell* at the time the *abbey* was dissolved.

CHAPMAN
against
NETHER-
COATE.

twelve and thirteen; a copy of the roll of assessments in the county of *Northampton*, from THE FIRST FRUITS OFFICE, being an account of the revenues of the ecclesiastical possessions in that county, taken pursuant to a commission of the thirtieth of *January*, in the twenty-sixth year of *Henry the Eighth*; a true copy of the surrender of the *abbey of Pipwell*, dated the fifth of *November*, in the thirtieth year of *Henry the Eighth*; and upon reading the following copies of the records in THE TOWER, viz. of a licence, dated the thirtieth of *January*, in the thirty-second year of *Edward the First*, to *Lord Latimer*, to fortify his house in *Braybrooke*; copy of the commission and inquisition *post mortem Matilda quæ fuit uxor Thomas Swinnerton*, in the thirty-fifth year of *Edward the Third*; copy of the commission and inquisition *post mortem Thomæ Latimer*, the ninth of *October*, in the third year of *Henry the Fourth*; copy of the commission and inquisition *post mortem Annæ quæ fuit uxor Thomæ Latimer*, both dated the fourth of *August*, in the third year of *Henry the Fourth*; a copy of a writ of livery of the manor and hundred of *Wardon*, to *Margaret*, the widow of *Edward Latimer*, in the twelfth year of *Henry the Fourth*; a copy of the commission and inquisition *post mortem Johannis Griffiths*, the commission dated the twenty-ninth of *January*, in the twenty-third year of *Henry the Sixth*, and the inquisition the fourth of *November*, in the twenty-fourth year of *Henry the Sixth*; a copy (signed by the clerk in court) of the bill brought by *John Rudge* and *James Hopkins*, against *Robert Chapman, &c.* in *Michaelmas Term*, in the eleventh year of his present majesty; the answer of the defendant *Chapman*; the depositions of *Richard Marshall* to the third and fourth interrogatories, and of *William Marshall* to the sixth interrogatory; the decree, dated the fifteenth day of *June 1741*; and the *postea*; the decree on the equity reserved, dated the eighth of *November 1742 (a)*; and the answer of the defendant *Nethercoate*, folio thirty six; THE COURT, on the seventh day of *December 1751*, directed the following issue to try, “Whether the messuage and
“lands whereof tithes are demanded by the bill was or were part
“of the possessions of the abbey and convent of the abbey and
“monastery of *Our Blessed Lady of Pipwell*, in the county of
“*Northampton*, at the time of the dissolution of the said abbey or
“monastery.”

(a) *Rudge v. Chapman*, vol. 2. p. 407. and *Chapman v. Spencer*, vol. 2. p. 449.

EASTER TERM
31. GEO. 2.

No. 200.

GARFORTH against TYRRELL.

Norfolk, 1st May 1758.

The tithes of
the parish of
Wiggenhall, in
Norfolk, decreed.

THE bill was brought for the tithes of the parish of *Wiggenhall* *Saint Mary Magdalen*, in *Norfolk*; and upon hearing counsel on both sides; and reading the answer; and an agreement between *William Garforth* and *John Young*, signed by both, and dated the first of *January 1750*; THE COURT ordered the defendant to account

account with the plaintiff *Young* for the rectorial or great tithes of the lands in his occupation for three years, with costs; and, by consent, with the plaintiff *Garforth* for the sum agreed on in the bill for the vicarial or small tithes arising on his said lands, with costs.

GARFORTH
against
TYRELL.

HOTHAM against MAW.

Lincolnshire, 5th June 1758.

TRIN. TERM,
31. GEO. 2.
No. 129.

THE bill was brought for the tithes of the parish of *Haxey*, in *Lincolnshire*; and after counsel were heard, and the depositions read, THE COURT declared the *modus* of fourpence to the impropiator for *Old Croft* and the *Commons* thereto belonging is proved, and the *modus* of sixpence not proved; and decree an account, by consent, of one lamb in fifteen, and one pound of wool in fifteen, on the lands in the occupation of *J. Maw* for the time demanded by the bill; the defendant to have an allowance of the line seed sold by *Thomas Maw* to the plaintiff's testator; but no costs to be paid on either side.

Tithes of the
parish of *Haxey*,
in *Lincolnshire*.

TAYLOR against HOLLIDAY.

Wiltshire, 23d November 1758.

MICH. TERM,
31. GEO. 2.
No. 144.

THE bill was brought for the tithes of *Sutton Veney*, in *Wiltshire*; and upon hearing counsel on both sides; the bill, as to the custom of setting out the corn, was dismissed without costs, by consent, and without prejudice; and THE COURT declared, that the defendants ought to account with the plaintiff for the tithes of clover demanded by the bill; but the plaintiff agreeing to take from the defendant *Holliday* two pounds, eighteen shillings, and sixpence for the tithe of the clover mowed by him, and from the defendant *Long* one pound, two shillings, and sixpence for the tithe of his clover, without costs; and the said defendant agreeing to pay the same accordingly; it was ordered, by such consent, that the said defendants do respectively pay the same accordingly.

The tithes of
clover decreed,
and the bill as to
the custom of
setting out corn
dismissed without
prejudice.

COMPTON against FREEMAN.

Northamptonshire, 17th June 1762.

TRIN. TERM,
2. GEO. 3.
No. 1.

THE bill was brought for the tithes of the parish of *Warming-ton*, in *Northamptonshire*; and upon hearing counsel; and reading several depositions taken in the cause; THE COURT decreed the defendants *Freeman* and *Rewell* to account for the tithes of agistment from the preceding *shearing day* to the time of their removal, with costs; and dismissed the bill as to the other matters, with costs. The defendant *Brown* to pay the two shillings and sixpence tendered with costs, unless he shew good cause to the contrary.

Agistment tithe
of sheep fed be-
tween *shearing
day* and *shearing
day*, and not
shorn in the
parish, decreed.

Bill for the tithes
of *Hale* dis-
missed for want
of parties, &c.

THE bill was brought for the tithes of the parish of *Hale*, in *Nottinghamshire*; and upon hearing counsel on both sides, the plaintiff's counsel objected, that the custom as laid in the answer was void; and THE COURT dismissed the bill so far as it prayed an establishment of the right to the tithes in question on all the lands in the three districts in the pleadings mentioned, with costs, the owners of the inheritance of the said lands not being all brought before the court; and ordered those defendants whose answers had not been replied to to have costs, viz. forty shillings, according to the course of the court. THE COURT further ordered the defendants the occupiers to account with the plaintiff for the tithes demanded by the bill for the time therein mentioned, with costs to this time; but the account to be taken without prejudice: the usual directions were given, and subsequent costs reserved.

MICH. TERM,
20. Geo. 3.
No. 65.

WOOD against BINGLEY.

Yorkshire, 13th December 1769.

Bill dismissed as
to tithe of tur-
nips, and retain-
ed till *modus* was
tried.

THE bill was brought for the tithes of the rectory of *Hemsworth*, in *Yorkshire*; and it was dismissed as to the claim for the tithe of turnips, with costs; and retained till after the issue tried in the cause of *Wood v. Harrison* (a) as to the custom of the defendant making the first crop of grass into hay in exemption to his paying tithe for the second.

(a) See vol. 3. page 250.

TRIN. TERM,
29. Geo. 3.
No. 77.

WOOD against BLANTERN.

Shropshire, 21st June 1770.

Bill, as far as it
respected *modus*,
dismissed by
consent.

THE bill was brought for the tithes of the parish of *Higb Ercall*, in *Shropshire*; and upon hearing counsel, it was decreed, by consent, that the defendant should account for the *modus*, according to the rate demanded by the bill, for three years, without costs on either side; and by the like consent, the bill, as far as it prayed an establishment of the *modus*, was dismissed without costs.

MICH. TERM,
21. Geo. 3.
No. 125.

HODGSON against TURNER.

Kent, 8th December 1770.

Tithes of *Sand-
hurst*, in *Kent*,
decreed.

ON a bill for the tithes of the parish of *Sandhurst*, in *Kent*, THE COURT decreed an account of the tithes demanded, with costs.

BARON

BARON against ATKINSON.

Yorkshire, 13th July 1775.

THE bill was brought for the tithes of the parish of *Tunstall*, in *Yorkshire*; and on reading the deposition of *James Atkinson* to the third, fourth, and fifth interrogatories; and the evidence on both sides; THE COURT directed an issue to try the *moduses* as laid in the answer.

TRIN. TERM
25. GEO. 3.
No. 113.

Issue directed
to try *moduses*.

LE CLERC against JAMES.

Staffordshire, 29th April 1776.

THE bill was brought for the tithes of the parish of *Gosnall*, in *Staffordshire*; and THE COURT decreed an account of the tithes demanded by the bill, with costs; and reserved the consideration of subsequent costs and further directions till after the report.

EASTER TERM
16. GEO. 3.
No. 24.

Tithe of *Gosnall*,
in *Staffordshire*,
decreed.

DORSET against COLLINS.

Suffex, 9th May 1776.

THE bill was brought for the tithes of the parish of *Walburton*, in *Suffex*; and on reading an endowment from the registry of the *Lord Bishop of Chichester*, dated the sixteenth of *June 1440*; THE COURT decreed an account of agistment tithe, and of the turnips which were gathered, and all other small tithes demanded by the bill, without costs; and dismissed the bill in respect of tithe wood and roots of the two coppices, without costs.

EASTER TERM
16. GEO. 3.
No. 32.

Agistment
tithes, the tithe
of turnips and
small tithes, ex-
cept as to the
wood and roots
of two coppices,
decreed.

KERRICK against INGLETON.

Essex, 8th July 1776.

THE bill was brought for the tithes of *Chigwell*, in *Essex*; and, on reading the register of the *Bishop of London* in 1362, an instrument therein, being an endowment of the vicarage of *Chigwell*, in *Essex*, the fourteenth of *June 1734*; and the admission and institution of the vicar being admitted; THE COURT directed an issue to try, "Whether a certain piece of land, called *Parsons Grove*, or *Parsons Brak*, was not given to the rector in lieu of all tithe of wood within the said parish of *Chigwell* prior to the endowment of the fourteenth of *June 1734*," with the usual costs."

TRIN. TERM,
16. GEO. 3.
No. 175.

Issue to try,
whether the
Parson's Brak
was in lieu of
tithe wood.

SMITH

MICH. TERM,
18. GEO. 3.
No. 103.

SMITH *against* GODDARD.

Wiltshire, 8th December 1777.

Issues directed
to try a *modus* in
the parish of
Swindon,
Wiltshire.

THE bill was brought for the tithes of the parish of *Swindon*, in *Wiltshire*; and on reading terriers, dated the thirteenth of *October* 1608, and the first of *June*, in the thirtieth year of *Queen Elizabeth*, and the seventeenth of *October* 1671, and the thirteenth of *December* 1704; twelve receipts, beginning the twenty-eighth of *March* 1667, and ending the twenty-fifth of *March* 1685, and signed *H. Thompson*, vicar; and several entries from a book of receipts, viz. the first of *June* 1759 from *Dr. Smith*, and the seventh of *November* 1753, by *W. Nichols*, for half-a-year's tithes, due at *Michaelmas* last; THE COURT decreed an account against the defendant *Buy* of the tithes demanded by the bill, with costs to this time; directed an issue to try the *modus* as alledged by the defendant *Goddard* in his first answer; and reserved the consideration of costs in regard to the defendant *Goddard* till after the return of THE POSTEA.

MICH. TERM,
18. GEO. 3.
No. 10.

KNAPP *against* CLARKE.

Buckinghamshire, 9th December 1777.

A bill for the
tithes of certain
lands in the pa-
rish of *Stenley*,
in *Buckingham-*
shire, dismissed,
on account of
their having
been parcel of
the possessions of
the priory of
Snelshall.

THE bill was brought for tithes in the parish of *Stenley*, in the county of *Bucks*; and on reading an office copy of the ecclesiastical survey taken the twenty-sixth year of *Henry the Eighth*; an indenture of demise from *Henry the Eighth* to *T. Lentbrop*, dated the tenth of *February*, in the twenty-seventh year of his reign, of the house and scite of the priory of *Snelshall*, and the lands and possessions belonging thereto; a copy of a grant from the said king to *F. Pigot* of the said house and scite of the priory of *Snelshall*, and the lands and possessions belonging thereto, dated the twentieth of *February*, in the thirtieth year of *Henry the Eighth*; a deed of exchange between *Henry the Eighth* and *F. Pigot*, dated the fourteenth of *March*, in the thirty-second year of *Henry the Eighth*; a copy of a particular in THE AUGMENTATION OFFICE referring to the said deed of exchange; a copy of a grant in the said office, from *Edward the Sixth* to *Sir T. Palmer, Knight*, of the house and scite of the said priory of *Snelshall*, with the lands and possessions belonging thereto, dated the twelfth of *April*, in the second year of *Edward the Sixth*; a particular upon which the said grant was grounded; a copy of a grant from *Queen Mary* to *E. Asbfield* of the house and scite of the said priory of *Snelshall*, and the lands and possessions thereto belonging, dated the twenty-second of *May*, in the first year of *Queen Mary*; and a copy of a conveyance, in THE ROLLS CHAPEL, from *Sir J. Fortescue* and others to the right honourable the *Marquis and Earl of Buckingham*, of the house and

and scite of the said priory of *Snellsball*, with the lands and possessions thereto belonging, dated the sixteenth day of *May*, in the eighteenth year of *James the First*; the bill was dismissed without costs.

KNAPP
against
CLARGE.

VYE against DUNTZE.

Devonshire, 25th June 1778.

TRIN. TERM,
18. GEO. 3.

No. 107.

THE bill was brought for the tithes of the parish of *Rochbere*, in the county of *Devon*. The plaintiff's counsel objected, that the *modus* was not well laid; and on reading the answer; and hearing the defendant's counsel in support of the *modus*; the objection was allowed, and an account of the tithes demanded by the bill, with costs to this time, decreed.

Modus not well
laid, and tithes
decreed.

ROBERTS against LEWIS.

Denbighshire, 22d June 1779.

TRIN. TERM,
19. GEO. 3.

No.

THE bill was brought for the tithes of the parish of *Wrexham*, in *Denbighshire*; and on reading, for the plaintiff, a grant from THE ROLLS to *Edward Lord Wotton*, of the rectory of *Wrexham*, in *Denbighshire*, dated the twenty-ninth of *April*, in the ninth year of *James the First*, 1611; a deed, signed *C. Wotton*, the twelfth of *November*, in the fourteenth year of *James the First*; another deed, dated the first of *October* 1772, signed *R. Ellice* and *P. Ellice*; and the pedigree from *J. Vaughan* to *R. Ellice*, under whom the plaintiff derived his title, being admitted; and upon reading, for the defendant, a terrier, dated the twenty-fourth of *September* 1685, and signed *Peter Wynne* and three churchwardens, of tithes belonging to the vicarage of *Wrexham*; another terrier, dated the twenty-fourth day of *August* 1749, of tithes belonging to the said vicarage; and reading several depositions of witnesses taken in this cause on both sides; THE COURT decreed an account of the tithes demanded by the bill, but without costs.

The tithes of
the parish of
Wrexham, in
Denbighshire, de-
creed.

JEREMY against STRANGWAYS.

Somersetshire, 30th June 1779.

TRIN. TERM,
19. GEO. 3.

No. 19.

THE bill was brought for the tithes of the parish of *Murlinch*, in *Somersetshire*; and upon reading, for the plaintiff, several depositions of witnesses; a decree, dated the sixth of *May*. *Easter Term*, in the thirty-first year of *Charles the Second*, in a cause *Bull v. Mellier*; and on reading, for the defendant, two decrees of the eleventh of *November* 1678 and the twenty fourth of *February* 1678; a grant, in the fifth year of *James the First*, of the

The vicarial
tithes of the pa-
rish of *Murlinch*,
in *Somersetshire*,
decreed.

JEREMY
STRAWGWAYS.

the rectory of *Murlinch*, in the county of *Somerset*; THE COURT declared the plaintiff, as vicar, to be entitled to the tithes demanded by the bill; and decreed an account thereof from the time of filing the bill, but without costs, to this time.

HILARY TERM
22. GEO. 3.
22. 42.

PLOWMAN *against* GALE.

Dorsetshire, 28th January 1782.

Moduses in the
parish of *Great*
Toller in *Dorset-*
shire, decreed.

THE bill was brought for the tithes of the parish of *Great Toller*, in *Dorsetshire*; and THE COURT decreed an account upon the foot of the *moduses*, as far as the same extended; and also an account of the tithes in kind as to the other matters demanded by the bill: costs and further directions to be reserved.

EASTER TERM
23. GEO. 3.
23. 120.

BUTT *against* HOLLIS.

Hampshire, 15th May 1783.

Tithes of clover
seeds, eggs, and
agistment, in the
parish of *New-*
church, decreed.

THE bill was brought for the tithes in the parish of *Newchurch*, in *Hampshire*; and THE COURT decreed an account of the tithes in kind of clover seed, eggs, and agistment, with costs; and dismissed the bill with costs as to the rest.

HILARY TERM
24. GEO. 3.
24. 206.

GWYN *against* CROYDON.

Worcestershire, 26th February 1784.

Tithes of the
hamlet of *Sut-*
ton decreed; and
the bill dismissed
as to the tithes
of the vicarage
of *Tendring*.

THE bill was touching the tithes of the hamlet of *Sutton*, in the parish of *Tenbury*, in *Worcestershire*; and THE COURT decreed an account to be taken of the tithes demanded by the bill, with costs as against the defendant the occupier; and dismissed the bill as to the demand of the tithes of the vicarage of *Tendring*, with costs as against the defendant *Croydon*, and without costs as against the defendant *Giffard*.

TRIN. TERM,
24. GEO. 3.
No. 95.

GACHES *against* HAYNES.

Warwickshire, 28th June 1784.

The bill as to
the tithes of a
MILL in the pa-
rish of *Wootton*
Wawen, in *War-*
wickshire, dismis-
sed, but without
costs, it being a
new and doubtful
question.

THE bill was brought for the tithes of the parish of *Wootton Wawen*, in *Warwickshire*; and MR. BARON EYRE delivered the opinion of the Court, and declared, that the tithe of a mill, though to be recovered in the nature of a *personal* tithe, is not to be taken strictly as a *personal* tithe, but is so far *predial*, and has so much reference to a certain place in which it arises, as, in the particular case before the court, to fall within the description of a *small tithe*, for or in respect of an old inclosure for which a sum of money has been appointed to be paid by virtue of an act of parliament.

parliament, and as such that it doth cease, determine, and is for ever extinguished. The bill therefore was dismissed, but without costs, it being a new and doubtful question.

*Catch
against
Haints.*

WEST *against* RUNNING.

Wiltshire, 26th January 1789.

HILARY TERM
29. GEO. 3.
No. 207.

THE bill was brought for the tithes of the parish of *Dantsey*, in *Wiltshire*; and on hearing counsel for all parties, and reading the following evidence for the defendants, viz. a receipt, dated the thirtieth of *May* 1757, and signed *Frances Maria West*, for two pounds, ten shillings, and sixpence, for half-a-year's composition tithe due at *Lady Day* last; several other receipts, for the like composition, to the year 1773; several receipts, from the twenty-seventh of *December* 1765 to the twenty-third of *January* 1781, for composition rent of tithes for *Dolman's* and *Park Pennys*; an extract from *Doomsday Book*, under title "*Wiltshire*;" an office copy of a grant from THE ROLLS of the manor of *Dantsey* to the *Earl of Monmouth*, in the second year of *William and Mary*; a book from the surveyor general's office, page 291; the entry of a petition to *James the Second*, by *Arthur, Earl of Torrington* (amongst other things) for a grant of the manor of *Dantsey*, in the year 1687; the particular thereof; the report of the surveyor general thereon, dated the thirteenth of *February* 1689, signed *William Harbord*; in page 363 of the same book, an order for a grant of the manor of *Dantsey* to the *Earl of Monmouth*, dated the twenty-ninth of *May* 1690; and the depositions of several witnesses; the cause was, on the twenty-ninth of *January* 1789, adjourned upon a proposal of accommodation.

Tithes of the
parish of *Dantsey*,
in *Wiltshire*.

STACEY *against* WALTHAM.

Essex, 3d February 1789.

HILARY TERM
29. GEO. 3.
No. 257.

THE bill was for the tithes of the parish of *Southminster*, in *Essex*; and upon hearing counsel on both sides, and reading the following evidence for the defendants (except the defendant *Colling*); viz. the depositions of several witnesses taken in the cause; an ancient map, without date, describing all the ancient farms in question, except *Old Mounsey*; several receipts, from the twentieth of *October* 1743 to the twenty-first of *January* 1768, signed *R. Firebrace, &c.* for a year's tithes of *New Mount Saile*, *Middlewick Marsh*, and *New Mount Saile*, expressed to be *moduses* in lieu of tithes of the said farms; and several other receipts, the cause was adjourned; and on the fifth of *February* 1789, THE COURT directed issues upon the several *moduses* for the respective farms, as laid in the answer, with liberty to indorse

Issues directed
to try *moduses*
respecting the
farm called *New
Mount Saile*
and *Middlewick
Marsh*, in the
parish of *South-
minster*, in *Essex*.

on

STACBY
against
WALTHAM.

on the *posse* any other payment which the jury should find. THE COURT also directed a separate issue on a separate record, to try the *modus* as laid in the answer of the defendant *Collings*. The said issues to be tried by special juries; and costs and further directions to be reserved till after the trial.

MICH. TERM,
32. GEO. 3.
No.

FRYER against SIMS.

Gloucestershire, 24th November 1791.

A bill for the
tithes of the pa-
rish of *Longney*,
in *Gloucestershire*,
dismissed with
costs.

THE bill was brought for the tithes of the parish of *Longney*, in *Gloucestershire*; and, on reading for the plaintiff, *viz.* an indenture of lease, dated the tenth day of *February* 1787, from *Lord Ashburnham* and others to the plaintiff, and for the defendant, a conventual lease of the manor of *Longney*, in the fourth year of the reign of *Henry the Eighth*; the like of the rectory of *Longney*, dated in the sixth year of *Henry of Eighth*; the minister's accounts of *Longney*, from the thirty-first and thirty-second years of *Henry the Eighth*; and reading, on the twenty-fifth of *November*, further evidence for the plaintiff, *viz.* copy of a grant from THE ROLLS CHAPEL of the rectory of *Longney*, dated the first of *August*, in the fourth year of *James the First*; the cause was adjourned over to the twenty-fourth of *January* following; and reading a book of the survey of lands belonging to the *Abbey of Malvern*, and now remaining in the king's remembrancer office; and hearing counsel fully on both sides, the bill was dismissed with costs.

MICH. TERM,
35. GEO. 3.
No. 123.

BAKER against ATHILL.

Norfolk, 7th November 1794.

Bill as to tithes
of clover, wool,
and agistments
dismissed, and
an issue directed
to try a *modus* as
to milk and
calves.

THE bill was brought for the tithes of the parish of *Causton*, in *Norfolk*; and on hearing counsel; and reading several depositions read on both sides; THE COURT dismissed the bill without costs as to tithe clover; and with costs, as to so much as sought an account of the tithes of wool, agistment, and *Easter offerings*; and directed an issue on the *modus* for milk and calves, as laid in the answer.

MICH. TERM,
35. GEO. 3.
No. 86.

ASH against WARD.

Buckinghamshire, 17th November 1794.

The bill dismissed as to the tithes of the *Old Inclosures*, in the parish of *Steeple Claydon*, in *Buckinghamshire*, and an issue directed to try the *modus*.

THE bill was brought for the tithes of the parish of *Steeple Claydon*, in *Buckinghamshire*; and on hearing counsel for all parties; and reading the answers and several depositions on both sides; a terrier of the parish of *Steeple Claydon*, dated the twenty-sixth of *July* 1636, brought from the archdeacon's court at *Aylesbury*, and signed by the vicar, churchwardens, and two others; another terrier, dated the twenty-ninth of *July* 1639, signed

signed by *Arid*, vicar, *Henry Cox* and *Francis Shirley*, churchwardens; another terrier, dated 1707, signed *William Chaloner*, curate, and *Thomas Abbots* and *Thomas King*, churchwardens; and it being alledged that the defendant *Hollis* had died since the examination of witnesses in this cause, the bill, as between the plaintiff and the other defendants, was dismissed with costs as to the demand of tithes of *the Old Inclosures*, with respect to such of the defendants as appeared to have been in the possession thereof; and issues were directed to try the *modus* as laid in the answer: the issues to be tried at the next assizes for the county of *Bucks*, with liberty to indorse the *posse* specially; and all costs and further directions to be reserved.

Ass
against
WARD.

CLARKE *against* JENNINGS.

Yorkshire, 20th December 1794.

MICH. TERM,
35. GEO. 3.
No. 45.

THE bill was brought for the tithes of the parish of *Bedlake*, in *Yorkshire*; and upon hearing counsel several days; and reading the depositions of several witnesses taken in the cause on both sides; THE COURT decreed an issue to try whether a certain close called *Parsons Ings*, in the township of *Aiskew*, in the parish of *Bedale*, in the pleadings of this cause mentioned, was given to the rectory of the parish church of *Bedale* aforesaid, in lieu of and as a satisfaction for all manner of tithes arising, growing, and renewing from and out of certain lands called *Water Lands*, situate in the said township of *Aiskew*, near a brook there called *Bedale Brook*, which said *Water Lands* are included within the boundary lines described on the map annexed to the defendant's answer, and referred to therein; and whether such close called *Parson's Ings* has from time immemorial been held and enjoyed by the rectors of the said parish church in lieu of and as a satisfaction for all the said tithes of the said *Water Lands* in the said township of *Aiskew*. The like issue was directed as to *Crook Ings* being given for the tithes of *Water Lands*, in *Bedale Township*: costs and further directions to be reserved till after the trial of the issues.

Issues directed to try whether the rector of *Bedlake*, in *Yorkshire*, holds the *Parson's Ings* in lieu of the tithes in kind of the *Water Lands*, in the parish of *Bedale* and *Crook Ings*, in lieu of the tithes of the *Water Lands*, in the township of *Bedale*.

FRANKLIN *against* GOOCH.

Norfolk, 11th February 1796.

HILARY TERM
36. GEO. 3.

THE bill was brought for the tithes of the parish of *Earsham*, in *Norfolk*; and THE LORD CHIEF BARON delivered the judgment of the Court, and decreed an account of the tithes of wheat as prayed by the bill, without costs.

Title of wheat in the parish of *Earsham* decreed.

ROBINSON

1796. TERM,
36. GEO. 3.

No. 27.

Bill for the tithes
of *Hockliffe*, in
Bedfordshire,
dismissed with-
out prejudice.

ROBINSON against DUFFIELD.
Bedfordshire, 29th June 1796.

THE bill was brought for the tithes of the parish of *Hockliffe*, in *Bedfordshire*; and the bill was dismissed without costs, and without prejudice to the plaintiff's claim to any of the titheable matters prayed by the bill.—N. B. The objection made to the notice for ending the composition was not good, and also of laying the *modus*.

MICH. TERM,
37. GEO. 3.

No. 478.

Bill dismissed as
to the vicarial
tithes of *Kew*
and *Peterham*, in
Surry.

FOSTER against HAVERFIELD.

Surry, 14th November 1796.

THE bill was brought by the vicar of *Kew* and *Peterham*, in the county of *Surry*; and on reading the statute of 8. & 9. GEO. 3. intitled, "An Act for dividing the Vicarage of *Kingslon upon Thames*, with the several Chapelries or Curacies thereto belonging into two separate Vicarages and two separate perpetual Curacies;" and also reading the depositions of several witnesses taken in the cause; the bill was dismissed without costs, as against the defendants *Haverfield* and *Davidson*; and with costs, as against the defendants the *Hardings's*.

MICH. TERM,
37. GEO. 3.

No.

An issue directed to try whether the vicar of *Flixton*, in *Suffolk*, is entitled to any and what tithes in any and what part of the parish.

POTTS against DURANT.

Suffolk, 17th November 1796.

THE bill was brought for the tithes of the parish of *Flixton*, in the county of *Suffolk*; and upon reading evidence for the plaintiff, viz. the defendant's answers, admitting the vicar's title and their occupation, and the service of the notices; also a terrier in the year 1613, after it had been objected to by the defendant's counsel, and the objection overruled; a terrier, dated the fourteenth of September 1706; another in 1716; another, dated the eighth of July 1729; one without date, signed by *T. Nuthal*, vicar, and the churchwardens; and one dated the fourteenth of July 1735; THE COURT decreed an issue to try whether the plaintiff was entitled to any, and what tithes claimed by his bill in any, and what part of the parish or titheable places thereof, with liberty to the judge who shall try the issue, to indorse any special matter upon the *posita*.

TRIN. TERM,
37. GEO. 3.

No.

An issue directed to try whether there is a *modus* of 7l. a year payable to the *Market Bosworth*,

WRIGHT against FOX.

Leicestershire, 21st July 1797.

THE bill was brought for tithes arising within the rectory of *Market Bosworth*, and particularly within the chapelry of *Sibson*. THE LORD CHIEF BARON delivered the judgment of the rector of *Sibson*, in lieu of the tithes in the chapelry of *Sibson*, in the parish of

Court;

Court; and decreed an issue to try whether the payment of seven pounds a-year made to the rector of *Sibson* had been made in lieu or satisfaction of tithes due to the rector of *Sibson* from any, and which of the lands of *Mr. Wollaston* in *Shenton*, in the occupation of any and which of the defendants his tenants, with liberty to indorse any other lands that the jury should find; the rector of *Sibson*, if he think fit, to attend the trial; and costs and further directions to be reserved.

WRIGHT
against
FOX.

LORD PETRE *against* BLINCOW.

Essex, 21st July 1797.

TRIN. TERM,
37. GEO. 3.
No. 312.

THE plaintiff was impropiator of *Mountnessing*, otherwise *Guynges Mountney*. THE LORD CHIEF BARON delivered the judgment of the Court; and decreed an issue to try whether *Lord Petre* is entitled to the tithes of the lands in question: costs and further directions to be reserved.

An issue directed to try whether *Lord Petre* is entitled to the tithes of *Guynges Mountney*.

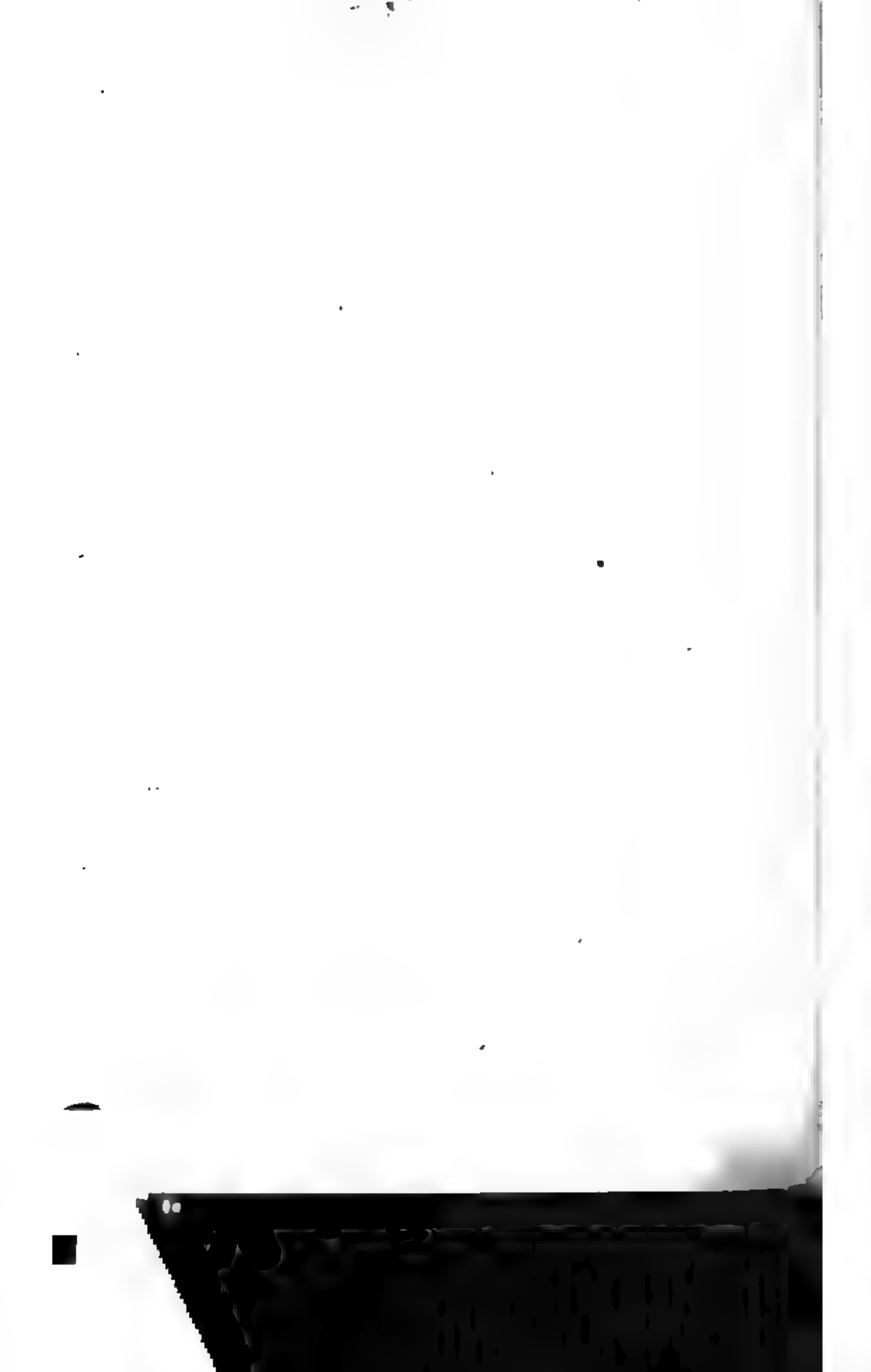
FOXTON *against* LORD RADNOR.

Berkshire, 13th July 1797.

HILARY TERM
38. GEO. 3.
No. 92.

THE bill was brought for the tithes of the parish of *Great Coxwell*, in *Berkshire*; and upon hearing counsel on both sides; and reading evidence for the plaintiff, *viz.* an endowment of the vicarage of *Coxwell*, dated the thirteenth of July 1436; a terrier of *Coxwell*, taken in the year 1635; a like terrier in 1658; the depositions of several witnesses taken in a cause in this court between *Francis Osbaldiston*, clerk, plaintiff, and *Sir George Pratt* and others defendants in *Charles the Second's* time, and the defendant's answer; and reading the following evidence for the defendant, *viz.* a writ of execution of a decree in the court of chancery, dated the sixteenth of May 1659; THE LORD CHIEF BARON, on the thirteenth of July 1798, delivered the judgment of the Court; and decreed, that so much of the bill as prayed an account of the tithes of corn and grain which arose upon the impropriate lands and grounds of the rectory of *Coxwell*, held and occupied by the defendant *Lord Radnor*, be dismissed without costs; that an account should be taken of the tithes of the lands in the occupation of the defendant *Crews*, as prayed by the bill, without costs; and also an account of one-eighth part of the composition received by *Lord Radnor* for the rectorial tithes of the parish of *Coxwell*, without costs.

Bill for the tithes of *Great Coxwell*, in *Berkshire*, dismissed as to the tithes of corn and grain of *Lord Radnor's* lands, and the eighth part of the composition received by him decreed.



A

T A B L E

OF THE

C O N T E N T S

OF

THE FOURTH VOLUME.

A.

ABERFRAW.

THE rector of *Aberfraw*, in *Anglesea*, is entitled to the tithes of hay made on the pasture grounds called *Frwynog*, part of *Tyndryfoel Farm*, although the hay be cut after cattle have depastured on the lands, *Owen v. Owen*, 332

ADDINGHAM.

1. The rector of *Addingham*, in *Yorkshire*, is entitled to the tithes of *Gatecroft Farm*, *Beechcroft Farm*, and *the Reildings*, in kind. *Thompson v. Emmott*, 307
2. *Quære*, Whether there is not a *modus* of one shilling and fourpence in lieu of the tithe grass of *Gatecroft Farm*, and the same for *Beechcroft Farm* and *the Reddings*, *Thompson v. Emmott*, 308

AGISTMENT.

1. A custom to pay threepence for every sheep not shorn in the parish. and one shilling for every hundred sheep brought into the parish after *Candlemas*, and sheared therein, and depastured one month, in lieu of the agistment tithes of such sheep, is good, *Bennet v. Allenby*, 67

2. *Quære*, Whether agistment tithes are due for post-horses while they are lame and unable to work, *Gibson v. Campbell*, 114
3. *Quære*, Whether agistment tithe is due for cattle depastured on land which has been mowed, and paid the tithe of hay in the same year, *Bennet v. Peart*, 238
4. A custom to pay agistment tithe of all sheep bred or shorn in the parish, and depastured therein between *shearing day* and *Candlemas Day*; threepence a-head for all sheep brought in after *Candlemas Day*, and removed out of the parish in the same year *unshorn*; and threepence a-head for all sheep which continue in the parish between *Candlemas Day* and *shearing day*, whether brought into the parish during that year, or bred and not shorn therein in the preceding year, is good, *Bennet v. Peart*, 243
5. But *quære*, Whether this custom extends to the agistment tithe of sheep brought into and depastured in the parish for one or two nights only in their way or passage through the parish from one place to another in the usual course of business for the supply of markets and other purposes, *Bennet v. Peart*, 239
6. *Quære*, Whether a custom to pay fourpence a score for the depasturing of lambs

Qq 2

tithe the parson to their tithe wool in kind, in lieu of the agistment tithes of such lambs, be good, *Scott v. Fenwick*, 248

7. Agistment tithes of sheep depastured between shearing day and shearing day on the aftergrafs of lands which had paid tithe hay the same year, decreed, *Baker v. Mason*, 258
8. The agistment tithe of sheep, or of barren and unprofitable cattle fed and depastured upon ground which has been before in the same year mowed for hay, and has paid the tithes of such hay, or a *modus* in lieu thereof, is not due to the vicar of common right, *Ellis v. Saul*, 360
9. A custom to pay one penny a sheep for every sheep brought into the parish before *Old Candlemas Day*, and sold out before the next shearing day unshorn, in lieu of the agistment tithes of such sheep, is good, *Paddy v. Fould*, 364
10. Agistment tithes are not payable for cattle used in husbandry, and fed on vetches cut green, as fodder, *Collyer v. Houle*, 440
11. Agistment tithes are payable for sheep fed between shearing day and shearing day on lands which have before paid tithes of hay, and for sheep folded at nights on fallow lands, and fed with hay merely for the purpose of manuring the land, *Houls v. Carter*, 451
12. Agistment tithe is payable for sheep fold before shearing day, for it is a new increase, *Coleman v. Barker*, 576
13. Same point, *Ryder v. Gould*, 580
14. Same point, *Compton v. Freeman*, 583

A I S G A R T H.

1. The landholders in the township of *Bainbridge, Ragdale Side, and Hawes Quarter*, in the parish of *Aisgarth*, in *Yorkshire*, pay to the rector four shillings and fourpence every *Michaelmas Day*, in lieu of all *predial tithes* arising on their said lands, *Scarr v. Trinity College*, 494
2. The impropriator of the parish of *Aisgarth* is only entitled to six shillings

Day, in lieu of the tithe of grals made into hay, or eaten by barren cattle arising on *Chaytor's Estate* called *Thoresby*, in the township of *Caperby*, in the said parish, *Chaytor v. Trinity College*, 507

3. The impropriator of *Aisgarth* is entitled to the tithe of agisting cattle on *Aisgarth Moor*, and on those allotments which were made of the said moor, when it was inclosed, to the person who had beast gates, cattle gates, and other rights of common thereon, *Wood v. Wray*, 510
4. He is also entitled to the tithes of wool and turnips, 513
5. But *quære*, Whether there are not *moduses* in lieu of the grals tithes of the lands called *Dovesfear and Whiterow*, in the township of *Burton cum Walden*; of *Dales Foot*, in the district of *Bishop Dale*; of *West How Gill*; of *Tompson's Lands*; of *Haw Rain*; of *Edgeley*; of *Sorrowsfikes*; and of *Pratt's Farm*, *Wood v. Wray*, 515

A L D I N G H A M.

1. The rector of *Aldingham*, in *Lancashire*, is only entitled to eight shillings yearly on *Old Michaelmas Day*, in lieu of the tithe hay arising on the *Copyhold Lands* in the township of *Leze*; and to twopence at *Easter* for every cow, depastured in the said township, which calves within a year before *Easter*, in lieu both of the tithes of her milk and of her calf, *Baldwin v. Atkinson*, 48
2. And it seems that there are other *moduses* payable in this parish in lieu of the tithes of calves cows, foals, and garden stuff, *Baldwin v. Atkinson*, 50

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T. 8. ———	Rederiſſe
M. 10. ———	St. M. Bermondſey
E. 16. ———	Lambeth
E. 18. ———	Horſell
M. 20. ———	Kingſton
M. 21. ———	Croydon
H. 21. ———	Ewell
E. 27. ———	Cranley
T. 27. ———	Gatton
E. 28. ———	Guilford
H. 32. ———	Wokeing
H. 34. ———	Godalming
M. 1. Jac. 2.	Streatham
H. 3. W. & M.	Camberwell
E. 4. ———	Molden
T. 5. ———	St. Mary, Newington
M. 8. Wm. 3.	East Horſley
T. 11. ———	Reigate
T. 13. ———	Kingſton
M. 13. ———	Ewell
T. 3. Anne	St. M. Rotherhithe
H. 5. ———	Send Cum Ripley
M. 6. ———	St. M. Bermondſey
M. 6. ———	Cuddington
T. 10. ———	Newdigate
T. 8. Geo. 1.	Epſom
T. 10. ———	Cobham

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T. 5. ———	Stoake
T. 6. ———	Stretham
E. 10. ———	Horn

<i>Reign.</i>	<i>Parish.</i>
T. 7. ———	New Shoreham
H. 12. ———	Pulborough
T. 34. ———	Ditchling

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M. 14. Eliz.	Lachley
H. 33. ———	Wevelsfield
M. 36. ———	Wylsfield
T. 43. ———	Horham
E. 3. Car. 1.	Shermanbury
E. 23. ———	St. Leonard's
E. 23. ———	Keymer
E. 23. ———	Amberley
E. 23. ———	Cleyton
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M. 13. ———	Pulborough
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T. 1. ———	Steyning
H. 1. ———	Eastbourne
H. 3. ———	Harling
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T. 4. ———	Binfear
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WARWICKSHIRE.

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H. 27. ———	White Acres
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T. 34. ———	Wovencote
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T. 5. ———	Newton
E. 6. ———	Wolfhancott
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T. 11. ———	Bishops Itchington
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E. 14. ———	Norton Curlew
E. 17. ———	Franton
E. 18. ———	Bishops Itchington
M. 22. ———	Wasperton
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E. 29. ———	Pryors Hardwick
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H. 1. Anne	Moreton Morrell
T. 4. ———	{ Kerley, City of
	{ Coventry
M. 4. ———	Moreton Morrell
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	{ wick
T. 13. ———	Berkeswell
T. 2. Geo. 1.	Bulkington
H. 11. ———	Sow
H. 12. ———	Stivichall, Coventry
H. 13. ———	Foleshill

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T. 23. ———	Barton Barony
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T. 4. ———	Bowerdale
T. 4. ———	Sandwicke
M. 9. ———	Crosby
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T. 18. Car. 2.	Bampton
T. 4. W. & M.	Kirby Kendall
M. 4. ———	Preston Patrick
H. 4. Anne	Heversham

WILT.

DECREES, &c. NOT REPORTED.

WILTSHIRE.

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H. 13. Eliz.	Ramsbury
M. 17. ———	Uphaven
T. 20. ———	Shelbourn Westcourt
H. 22. ———	Farnham
H. 22. ———	Roukley
H. 22. ———	Roued
T. 24. ———	Ludgershall
E. 33. ———	Mildenhall
M. 37. ———	Avebury
E. 39. ———	Donnington
M. 3. Jac. 1.	{ Cricklade St.
	Sampson
M. 3. ———	Northurydell
T. 4. ———	Wyddell
M. 19. ———	Little Sutton
T. 3. Car. 1.	} Savernack
T. 6. ———	
M. 8. ———	
E. 5. ———	Burbage
T. 3. ———	Tisbury
T. 7. ———	Meere
E. 16. ———	Chippenham
H. 12. Car. 2.	Hippencombe Farm
T. 14. ———	Pirton
M. 15. ———	Kingston Deverell
M. 19. ———	Bitcham Stoke
M. 23. ———	Marden
M. 28. ———	Ramsbury
H. 29. ———	Orcheston St. George
E. 30. ———	{ Cricklade St.
	Sampson
T. 32. ———	Drinkworth
M. 32. ———	Mildenhall
M. 32. ———	Westbury
H. 32. ———	Patney
H. 32. ———	Wroughton
T. 33. ———	Brinkworth
T. 33. ———	Swindon
H. 33. ———	Shrenton
E. 35. ———	Dracott
H. 35. ———	Stourton
E. 36. ———	Combe Riffell
H. 1. Jac. 2.	Dunnington
H. 1. ———	Froxfield
M. 1. ———	Preshutt
M. 3. ———	Church Yatton
E. 2. W. & M.	Hulperton
E. 5. ———	Meckletham
T. 8. Wm. 3.	Draycot Folliott
H. 9. ———	Hippencombe
E. 10. ———	Hilxtan
H. 10. ———	Easton Gray
H. 11. ———	Stapleford
T. 13. ———	Berwick St. James

<i>Reign.</i>	<i>Parish.</i>
M. 4. Anne	Stockton
T. 8. Geo. 1.	Castle Eaton
E. 11. ———	Chippenham
H. 3. Geo. 2.	Chigwell Magna
T. 5. ———	Durrington
T. 21. ———	Lynaham
T. 24. ———	Luckington
M. 31. ———	South Veney
T. 33. Geo. 3.	Great Knowle

WORCESTERSHIRE.

T. 15. Eliz.	Ombersley
T. 27. ———	Leigh
E. 38. ———	Chester the Street
H. 22. Jac. 1.	Little Comberton
E. 2. Car. 1.	Comberton
M. 2. ———	Suckley
M. 7. Car. 2.	Ombersley
M. 10. ———	Berrow
H. 12. ———	Dodderhill
M. 20. ———	Cumberton Parva
H. 24. ———	Morton Abbots
T. 27. ———	Wolverley
M. 28. ———	Alvechurch
T. 30. ———	Little Comberton
H. 32. ———	Bibbesford
H. 32. ———	Belbroughton
H. 34. ———	Kempsey
H. 3. Jac. 2.	Aldermaston
H. 3. ———	Hanley
E. 5. W. & M.	Kempsey
H. 9. Wm. 3.	Suckley
T. 3. Anne	Hanley
T. 5. ———	Grafton Fliford
H. 5. ———	Suckley
H. 5. ———	Knightwick
E. 10. ———	Old Swinford
T. 12. ———	Wychinford
H. 5. Geo. 1.	Great Comberton
H. 8. ———	Bredon
T. 8. ———	Tenbury
H. 12. ———	Dailsford
H. 3. Geo. 2.	Dodderhill
E. 12. ———	Bricklehampton
M. 12. ———	Little Comberton
T. 28. ———	Badsey

YORKSHIRE.

M. 4. Eliz.	Fenton
M. 6. ———	Gibson
E. 7. ———	Rocliffe
M. 7. ———	Gisborne
E. 10. ———	Snaith
T. 14. ———	Eshalt
T. 14. ———	Lindley

<i>Raign.</i>	<i>Parish.</i>	<i>Raign.</i>	<i>Parish.</i>
M. 14. ———	Uflet	M. 44. ———	Newthorp
M. 15. ———	Winstedale Forest	H. 45. ———	Heningborough
T. 14. ———	} Middleham	M. 1. Jac. 1.	Norchiffe
M. 15. ———		M. 4. ———	Adwicke
T. 16. ———	Corwick	M. 3. ———	Scarborough
E. 17. ———	Uflete	E. 5. ———	Silkestone
H. 19. ———	Maxwell	E. 5. ———	Cawthorne
T. 20. ———	Lynton	E. 5. ———	Barnsley
T. 20. ———	Thresfield	M. 8. ———	Aisgarth
T. 21. ———	East Witton	H. 6. ———	Fyllinge
T. 23. ———	Beverley	E. 8. ———	Bolton
E. 24. ———	Cherry Burton	T. 13. ———	Swanlands
E. 24. ———	Grindleton	M. 14. ———	Aisgarth
E. 24. ———	{ Waddington in	T. 14. ———	Cawthorne
	{ Mytton	E. 16. ———	Leeds
M. 25. ———	Selby	T. 17. ———	Holton
E. 26. ———	Hakon	E. 20. ———	Hovingham
E. 26. ———	White Kirke	H. 5. Car. 1.	} Darton
T. 26. ———	Gillingham	H. 5. ———	
E. 27. ———	Studley	T. 6. ———	
H. 28. ———	Whitby	H. 7. ———	
M. 30. ———	Easington	H. 8. ———	} Wixley
M. 30. ———	Laverton	T. 6. ———	
T. 31. ———	Ronkwith	M. 7. ———	
T. 31. ———	Walsfe	H. 8. ———	
M. 31. ———	Peniston	M. 11. ———	Hatfield
M. 31. ———	Calverley	M. 9. ———	Halifax, &c.
M. 31. ———	Stillingfleet	M. 18. ———	Dawley
E. 32. ———	Fyllings	E. 4. Car. 2.	Rippon
E. 33. ———	Great Ufborne	M. 6. ———	Middleham
T. 33. ———	Gargrave	T. 7. ———	Swyne, &c.
M. 34. ———	Bingley	M. 7. ———	Ripon
M. 35. ———	Birton	M. 7. ———	Cherry Burton
T. 36. ———	Kirstall	T. 8. ———	Almonbury
T. 34. ———	Silkeston	E. 8. ———	North Newbold
M. 36. ———	Kirkburton	E. T. ———	} Kirkby Malyard
M. 36. ———	Lowthorpe	E. 10. ———	
M. 36. ———	Moor Monkton	H. 10. ———	
E. 37. ———	Pengston	T. 11. ———	
M. 37. ———	Griggleswick	T. 12. ———	East Granton
H. 38. ———	Owthorne	M. 13. ———	Sedbergh
M. 39. ———	Saxton	E. 14. ———	Middleton
E. 40. ———	Spaldingholme	H. 16. ———	Foston
T. 40. ———	Halifax	M. 19. ———	Hatfield
H. 40. ———	Heningborough	T. 20. ———	Sutton in Caltres
E. 42. ———	Holdenby Park	H. 20. ———	Aisgarth
M. 42. ———	Cottingham	M. 26. ———	Rippon Park
M. 42. ———	Grovel	M. 26. ———	Swihe
M. 42. ———	Holmechurch	M. 27. ———	{ Horton in Rib-
H. 42. ———	{ Copmanthorpe	T. 28. ———	{ besdale
	{ Temple	H. 30. ———	{ Holgate, City of
M. 43. ———	Birball	E. 31. ———	{ York
M. 43. ———	Leverfedge	H. 31. Car. 2.	Kirby Onear
M. 44. ———	Askam Bryan		Eastgreenton
M. 44. ———	Lemarton in Fenton		Eastby
			Kilburne, &c.
			Pickering
			Kayingham
			Gainsford, &c.

T. 33. —	Drax	M. 9. Wm. 3.	Whiston
H. 34. —	Bradfield	T. 10. —	Kirkburton
H. 35. —	Fowleston	T. 11. —	Kirkby Overton
E. 36. —	Whitby	H. 11. —	Kippax
H. 1. Jac. 2.	Bradfield	T. 13. —	Yorkfield
E. 1. —	Birkby	H. 13. —	
M. 1. —	Sandall Magna	M. 1. Anne	Birdfall
E. 2. —	Helmesby	T. 4. —	Aldborough
T. 2. —	Darfield	T. 7. —	Phillis Church
M. 2. —	Wheeldale Rigg	M. 9. —	Bradfield
T. 3. —	Hawnby	M. 10. —	Wragby
T. 2. W. & M.	Calverley	T. 2. Geo. 1.	Whiston
T. 4. —	Catherick	M. 10. —	Driffild
M. 7. Wm. 3.	Little Usburne	H. 10. —	Barton in the Street
H. 7. —	Lyngthorpe	H. 11. —	Brignall
T. 8. —	Leeds, &c.	T. 5. Geo. 2.	Rochdale, &c.
T. 8. —	Halifax	E. 11. —	Monk Fryton
T. 8. —	Scorton in Catharick	T. 21. —	Thornhill
H. 8. —	Ecclesfield	T. 25. —	East Grinstead

CALENDAR

TO THE

BOOKS OF DECREES AND ORDERS.

QUEEN ELIZABETH

Began her Reign the 17th of Nov. 1558.

No.	BEGINS.	ENDS.
1		558
2	H. 1	1558
3	M. 6	—64
4	M. 11	—69
5	M. 14	—72
6	M. 14	—72
7	T. 20	—78
8	M. 22	—80
9	T. 24	—82
10	H. 25	—83
11	M. 27	—85
12	H. 28	—86
13	H. 29	—87
14	H. 30	—88
15	H. 31	—89
16	H. 32	—90
17	H. 32	—90
18	H. 34	—92
19	H. 34	—92
20	M. 35	—93
21	M. 36	—94
22	E. 38	—96
23	H. 39	—97
24	E. 40	—98
25	H. 42	1600
26	M. 43	1600
27	M. 43	—1
28	M. 44	—2
29		

Elizabeth died the 24th of March 1603.

KING JAMES THE FIRST.

24th of March 1603.

No.	BEGINS.	ENDS.
1	E. 1	1604
2	M. 3	—6
3	M. 3	—6
4	E. 4	—7
5	T. 5	—8
6	M. 5	—8
7	T. 6	—9
8	E. 7	—10
9	H. 7	—10
10	E. 9	—12
11	E. 8	—11
12	H. 8	—11
13	E. 9	—12
14	M. 9	—12
15	E. 10	—13
16	E. 11	—14
17	M. 10	—13
18	M. 11	—14
19	M. 11	—14
20	H. 11	—14
21	M. 12	—15
22	M. 13	—16
23	H. 13	—16
24	H. 14	—17
25	H. 14	—17
26	E. 16	—19
27	T. 16	—19
28	E. 17	—20
29	H. 17	—20
	E. 18	

T. 3	1606
E. 5	—8
T. 5	—8
H. 6	—9
E. 6	—9
H. 6	—9
M. 7	—10
H. 7	—10
H. 8	—11
H. 9	—12
M. 8	—11
M. 9	—12
H. 9	—12
M. 10	—13
H. 10	—13
M. 11	—14
M. 11	—14
T. 12	—15
T. 13	—16
T. 13	—16
M. 13	—16
M. 14	—17
M. 14	—17
H. 15	—18
E. 16	—19
H. 6	—19
M. 17	—20
H. 17	—20
T. 19	—22
E. 19	

A CALENDAR TO THE BOOKS OF DECREES AND ORDERS.

	BEGINS.	ENDS.		BEGINS.	ENDS.
30	E. 18 —21	E. 19 —22	17	H. 10 —35	M. 11 —36
31	T. 19 —22	T. 20 —23	18	E. 11 —36	H. 11 —36
32	M. 19 —22	H. 20 —23	19	E. 12 —37	E. 13 —38
33	T. 20 —23	T. 21 —24	20	H. 11 —36	E. 13 —38
35	M. 21 —24	T. 22 —25	21	T. 13 —38	H. 13 —38
36	T. 22 —25		22	T. 13 —38	E. 14 —39
37	M. 22 —25		23	E. 14 —39	H. 14 —39

Died the 27th of March 1625.

KING CHARLES THE FIRST.

27th of March 1625.

No.	BEGINS.	ENDS.
1	M. 1 1626	T. 2 1627
2	H. 1 —26	H. 2 —27
3	M. 2 —27	H. 3 —28
4	E. 3 —28	E. 4 —29
5	E. 4 —29	T. 5 —30
6	T. 4 —29	E. 5 —30
7	T. 5 —30	E. 6 —31
8	M. 5 —30	M. 6 —31
9	T. 6 —31	T. 7 —32
10	H. 6 —31	H. 7 —32
11	E. 8 —33	H. 8 —33
12	E. 8 —33	H. 8 —33
13	E. 9 —34	H. 9 —34
14	E. 9 —34	H. 9 —34
15	E. 10 —35	M. 10 —35
16	E. 10 —35	H. 10 —35

Died the 30th of January 1649.

KING CHARLES THE SECOND.

30th of January 1649.

No.	BEGINS.	ENDS.
33	E. 1 1649	T. 3 1652
34	H. 1 —50	E. 5 —54
35	E. 4 —53	M. 6 —55
36	M. 1 —50	E. 9 —58
37	E. 7 —56	T. 8 —57
38	M. 8 —57	H. 10 —59
39	M. 9 —58	T. 13 —62

A CALENDAR TO THE BOOKS OF ORDERS, BEGINNING 15th CAR. II.

BEGINS.	ENDS.	BEGINS.	ENDS.
H. 15 1664	M. 15 1664	E. 34 —83	M. 34 —83
H. 16 —65	T. 17 —66	H. 35 —84	T. 2 am. 2 —87
M. 17 —66	T. 20 —69	Died the 6th of February 1685.	
M. 20 —69	H. 22 —71	KING JAMES THE SECOND.	
E. 22 —71	M. 23 —72	6th of February 1685.	
H. 24 —73	M. 25 —74	BEGINS.	ENDS.
H. 26 —75	M. 27 —76	M. 2 1687	M. 4 1689
H. 28 —77	M. 28 —77	Ended his reign the 26th of May 1689.	
H. 29 —78	H. 30 —79	KING	
H. 30 —79	E. 31 —80		
E. 31 —80	H. 33 —82		
E. 33 —82	H. 34 —83		

A CALENDAR TO THE BOOKS OF ORDERS.

KING WILLIAM AND QUEEN MARY,

13th of February 1689.

BEGINS.	ENDS.
E. 1 1690	M. 4 1693
E. 5 —94	T. 6 —95
M. 6 —95	H. 7 —96

Mary died the 28th of December 1694.

E. 6 1697	M. 10 1699
M. 11 1700	H. 13 —2

William died the 8th of March 1702.

QUEEN ANNE,

8th of March 1702.

BEGINS.	ENDS.
E. 1 1703	H. 2 1704
E. 2 —4	T. 2 —4
M. 3 —5	M. 4 —
H. 3 —5	M. 4 —6
H. 4 —6	M. 5 —7
M. 5 —7	H. 7 —9
E. 8 —10	E. 10 —12
T. 10 —12	T. 11 —13
M. 11 —13	T. 1 G. 1 1715

Died the 1st of August 1714.

KING GEORGE THE FIRST.

1st of August 1714.

BEGINS.	ENDS.
M. 2 1715	E. 6 1719
T. 6 —19	E. 8 —22

BEGINS.	ENDS.
M. 9 —22	T. 11 —24
M. 11 —24	M. 1 Geo. 2 —27

Died the 11th of June 1727.

KING GEORGE THE SECOND.

11th of June 1727.

BEGINS.	ENDS.
H. 12 1727	M. 4 1730
H. 4 —30	H. 7 —34
E. 8 —35	H. 12 —38
E. 12 —39	T. 39 —45
M. 19 —45	H. 24 —50
E. 24 —51	E. 26 —55
T. 26 —55	T. 33 —60

Died the 26th of October 1760.

KING GEORGE THE THIRD.

25th of October 1760.

BEGINS.	ENDS.
M. 1 1760	E. 5 1765
T. 5 —65	T. 19 —69
M. 10 —69	H. 13 —73
E. 13 —73	H. 17 —77
E. 17 —77	H. 21 —81
M. 22 —82	T. 26 —85
M. 27 —85	E. 29 —89
T. 29 —89	M. 34 —93
H. 34 —94	

A CALENDAR TO THE BOOKS OF DECREES, BEGINNING JAC. I.

BEGINS.	ENDS.	BEGINS.	ENDS.
H. 2 Jac. 1. 1605	T. 11 —1614	E. 1 Anne 1703	M. 6 —
M. 11 —14	H. 21 —24	H. 6 —8	E. 11 —13
E. 22 —25	T. 6 Car. 1 —31	T. 11 —13	T. 1 Geo. 1 —14
M. 6 Car. 1 —31	E. 15 —40	M. 1 —14	E. 2 —16
T. 15 —40	M. 5 Car. 2 —54	T. 2 —16	H. 6 —19
H. 5 Car. 2 —54	T. 9 —58	E. 6 —20	H. 9 —22
M. 8 —57	H. 10 —59	E. 9 —23	T. 12 —26
T. 12 —61	H. 15 —64	M. 13 —26	T. 4 Geo. 2 —30
E. 16 —65	E. 21 —70	M. 4 —30	H. 8 —34
H. 20 —69	T. 23 —72	E. 9 —35	T. 17 —43
M. 23 —72	H. 26 —75	M. 17 —43	T. 27 —53
E. 26 —75	T. 29 —78	M. 27 —53	M. 2 Geo. 3 —61
M. 29 —78	T. 34 —83	H. 2 Geo. 3 —62	T. 9 —69
M. 34 —83	E. 2 Jac. 2 —87	M. 10 —69	T. 14 —74
T. 2 Jac. 2 —87	H. 3 W.&M. —92	M. 15 —74	H. 19 —79
E. 1 W.&M. —90	H. 3 —92	E. 19 —79	H. 24 —84
E. 4 —93	M. 9 —98	E. 24 —84	T. 30 —90
H. 9 —98	M. 6 Ann 1708	M. 31 —90	



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